United States Court of Appeals

for the Second Circuit

APPENDIX

76-6015

In The

United States Court of Appeals

For The Second Circuit

MARK JACOBSON and RANGER BAKERS, INC.,

Plaintiffs-Appellants,

-against-

THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, THE INTERNAL REVENUE SERVICE OF THE UNITED STATES, MARTIN SENZER, Revenue Officer, DOMINICK PALLILA, Group Manager, RAYMOND KEENAN, Chief, Collection Division, and CHARLES BRENNAN, District Director,

Defendants-Appellees.

UNITED STATES COURT OF APPEALS
FILED
MAY 17 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

APPENDIX

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75C 1718 JACOBSON v. ORGANIZED CRIME, et al.

DATE	NR.	PROCEEDINGS
10-15-75		Complaint filed. Summons issued. (1)
10-15-75		Before NEAHER, J.-Case called. Pltff's motion for TRO denied. Order to show cause hearing adj'd to 10-24-75. (mg) ---
10-22-75		By NEAHER, J - Order to show cause dtd 10-15-75 ret 10-24-75 at 3 P.M. filed.
10-22-75		Memorandum of law in support of order to show cause filed. (2)
10-22-75		Summons returned and filed/executed. (3)
10-24-75		Notice of motion to quash subpoenas, ret 10-24-75 at 3 P.M. filed. (4) (5)
10-24-75		Before NEAHER, J.--Case called. Attorneys for all sides present Deft's motion to quash pltff's subpoena argued & granted. Pltff's motion for preliminary injunction argued. Decision reserved. ---
11-12-75		By NEAHER, J.-Memorandum and Order dtd that pltffs' motion for preliminary injunction is denied, and the complaint as it seeks to enjoin the IRS from the assessment and collection of taxes is denied. The Clerk is directed to enter judgment in favor of defts IRS, Martin Zenzer, Dominic Pallila, Raymond Keenan and Charles Brennan, dismissing the complaint filed. (mg) Copies mailed.
11-14-75		JUDGMENT filed, dismissing the complaint as to defts IRS, Senzer, Pallial, Kennan & Brennan filed. (6) (7)
12-19-75		Notice of motion and memorandum of law to dismiss complaint, ret 1-16-76 at 10 A.M. filed.
1-14-76		Notice of appeal filed. Copy mailed to C of A and to U.S. Atty. (8) (9) (10)
1-14-76		Bond filed. (mg) (11)
1-19-76		Stenographer's transcript dtd 10-24-75 filed. (12)
1-22-76		Memorandum in opposition to motion to dismiss filed. (mg) (13)
1-28-76		Before NEAHER, J.-Case called. Deft's motion to dismiss the complaint argued, decision reserved.
2-10-76		By NEAHER, J.-Order to show cause ret. 2-11-76 with memo of law to extend time to perfect an appeal and to print the record on appeal filed. (14) (15)
2-13-76		Before NEAHER, J.-Case called. OTSC adj'd to 3-5-76 and is to be submitted on paper by stipulation of all parties. ---
2-13-76		By NEAHER, J.-ORDER dtd 2-11-76 that pending this Court's determination of appellants' motion the notice of pre appeal conf. directing appellants' to file the record on appeal on or before 2-14-76 etc be deemed inoperative pending further orders of this Court after determination of appellants' OTSC dtd 2-10-76 filed. (16)
2-17-76		By NEAHER, J.-Stipulation dtd 2-11-76 re appellant's time to print its record on appeal and to serve its memoranda of Law filed. See stipulation.
2-26-76		Memorandum in opposition to pltff's motion to extend time to perfect appeal filed. (17) (18)
3-4-76		Reply memo in support of pltff's motion to extend time to perfect an appeal filed. (19)
3-18-76		By NEAHER, J.-Memorandum and Order dtd 3-17-76 granting pltffs' motion for an extension of time for filing their notice of appeal etc filed. The time for transmission of the record is extended to 4-12-76. (p/c)
3-8-76		Unsigned Order to Show Cause filed. (20)
3-8-76		Memorandum of law in support of Motion to quash Subpoena duces tecum issued to the Organized Crime and Racketeering Section of the U.S. Dept. of Justice filed. (21)
[illegible]		[illegible] (22)

BEST COPY AVAILABLE

A TRUE COPY ATTEST
April 5, 1977
LEWIS ORDEL, CLERK
BY Mary Anne Grant DEPUTY CLERK

COMPLAINT (Filed October 15, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -x

MARK JACOBSON and RANGER BAKERS, INC.,

Plaintiffs-Petitioners,

-against-

THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, THE INTERNAL REVENUE SERVICE OF THE UNITED STATES, MARTIN SENZER, Revenue Officer, DOMINICK PALLILA, Group Manager, RAYMOND KEENAN, Chief, Collection Division and CHARLES BRENNAN, District Director,

Defendants-Respondents.

- -x

COMPLAINT

No. 75C 1718

Plaintiffs-Petitioners ("Plaintiffs"), by their attorney, IRVING MANDELL, Esq., for their complaint against the defendants, allege and show:

ALLEGATIONS RELATIVE TO ALL CAUSES OF ACTION

FIRST: At all times hereinafter mentioned, the plaintiff, RANGER BAKERS, INC., ("Ranger"), is a domestic corporation, duly organized and existing under and by virtue of the Laws of the State of New York.

SECOND: At all times hereinafter mentioned, the plaintiff MARK JACOBSON, was and still is the president of RANGER,

THIRD: Upon information and belief, at all times hereinafter mentioned the defendant-respondent ("defendant"), ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, ("Strike Force"), was and still is a section of the Department of Justice whose function it is solely through lawful means to apprehend persons actually engaged in racketeering and whoare members of organized crime.

FOURTH: Upon information and belief at all times hereinafter mentioned defendant, INTERNAL REVENUE SERVICE, ("I.R.S."), was and still is an agency of the Department of the Treasury of the United States Government, empowered as specifically provided by statute to collect taxes due to the Government, but not empowered by statute or regulation to act as an arm of the STRIKE FORCE or to intimidate, abuse or harass taxpayers under color of performing its lawful duties and functions.

FIFTH: Upon information and belief and at all times hereinafter mentioned defendant MARTIN SENZER, ("Senzer"), was and still is a Revenue Officer of the IRS, employed at 74-09 37th Avenue, Jackson Heights, N. Y., and he is duty bound at his peril to comply with the Statutes and Regulations of the Internal Revenue Code, and none other.

SIXTH: Upon information and belief and at all

times hereinafter mentioned defendant DOMINICK PALLILA, ("Pallila") was and still is a Revenue Officer of the IRS, and is Group Manager of the Jackson Heights office of the IRS and is directly responsible for the supervision of Revenue Officers in his group, and at his peril is duty bound to comply with the Statutes and Regulations of the Internal Revenue Code, and none other, and to see that his Revenue Officers so comply.

SEVENTH: Upon information and belief and at all times hereinafter mentioned defendant RAYMOND KEENAN, ("Keenan"), was and still is Chief of the Collection Division of the IRS and directly supervises the acts of Revenue Officers and Group Managers and more particularly the acts of SENZER and PALLILA and claims by virtue of his office to have the power to approve or veto their actions and, at his peril, said defendant KEENAN is duty bound to comply with the Statutes and Regulations of the Internal Revenue Code, and none other, and to see that those persons under his supervision and control so comply.

EIGHTH: Upon information and belief and at all times hereinafter mentioned, defendant CHARLES BRENNAN, ("Brennan") was and still is a District Director of the IRS with jurisdiction over the Queens and Brooklyn offices and directly supervises the acts of the Chief of the Collection Division, defendant KEENAN and defendants SENZER and PALLILA and by virtue of his office has the

power to approve or veto their actions, and at his peril, said defendant BRENNAN is duty bount to comply with the Statutes and Regulations of the Internal Revenue Code and none other, and to see that the persons under his supervision and control so comply.

NINTH: That the jurisdiction of the following causes of action is conferred upon this Court by Section 1343, Title 28 of the United States Code and by Virtue of Section 1331, Title 28 of the United States Code.

FOR A FIRST CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF RANGER AGAINST THE DEFENDANT, "STRIKE FORCE".

TENTH: Plaintiff repeats and realleges each and every allegation contained in paragraphs, "FIRST" through "NINTH" inclusive as if fully set forth herein.

ELEVENTH: That since October 29, 1975 when the plaintiff RANGER acquired certain assets of Silvercup Bakers, the defendant STRIKE FORCE has engaged in a continuing series of acts designed solely to harass said plaintiff and to prevent it from carrying on its normal and regular business operations, typical of said acts being:

(a) The issuance of a Grand Jury Subpoena without good cause for RANGER'S books and records which are necessary to

RANGER'S daily operations.

(b) The issuance of a Grand Jury Subpoena on August 11, 1975 without good cause for the books and records of RANGER'S insurance broker not only with respect to RANGER but o of its major customers as well, solely for the purpose of intim dating the witness and tacitly threatening RANGER'S customer th it continues to do business with RANGER at its peril.

(c) Upon information and belief, sending its agents to Kansas City to interview RANGER'S vendor of flour thereby tacitly threatening RANGER'S vendor that it continues t do business with RANGER at its peril.

(d) Upon information and belief, making availabl to a reporter of the New York Daily News information, false in fact and based upon hearsay and surmise which said defendant should not have disclosed and which information said reporter u to write a series of articles falsely alleging that RANGER was "mob" controlled.

(e) Upon information and belief, directing its personnel or other law enforcement personnel acting in concert with it, to visit RANGER'S financial and banking resources and spread false and malicious stories therein as a result of which said financial institutions refused to loan RANGER funds necess to operate its business. RANGER was therefore unable to meet i

obligations, incurred tax liabilities and its very existence is threatened with extinction.

(f) Upon information and belief defendant has enlisted the aid of the defendant IRS and the individual defendants to badger and harass RANGER and has used said agency as a part of the STRIKE FORCE operations to destroy RANGER, motivated solely by a personal vendetta; said use of the IRS and its representatives being wholly improper and in violation of law.

ELEVENTH: Upon information and belief that the aforesaid acts by the STRIKE FORCE are only a part of the acts committed by it presently known to this plaintiff and said acts have been committed in bas faith and solely to destroy RANGER and the Plaintiff MARK JACOBSON, and that said acts constitute an unauthorized and unlawful abuse of the power of the STRIKE FORCE.

TWELFTH: Unless the defendant STRIKE FORCE and its employees, agents and representatives are permanently enjoined from further and continued unlawful and unauthorized acts and from abusing its power against plaintiff RANGER, said plaintiff will suffer irreparable damages.

THIRTEENTH: That the plaintiff RANGER has no adequate remedy at law.

AS AND FOR A SECOND CAUSE OF ACTION
BY THE PLAINTIFF MARK JACOBSON
AGAINST THE DEFENDANT STRIKE FORCE

FOURTEENTH: Plaintiff MARK JACOBSON repeats and realleges each and every allegation contained in paragraphs "FIRST" through "TWELFTH" inclusive as if fully set forth herein.

FIFTEENTH: That in addition to the series of actions set forth in paragraph "ELEVENTH" herein taken against the Plaintiff RANGER, which also directly effect the well being of the plaintiff MARK JACOBSON, the STRIKE FORCE has engaged in other acts designed solely to harass the plaintiff JACOBSON and to prevent him and his immediate family from living a normal existence. Typical of said acts are the following:

(a) In 1973 the STRIKE FORCE issued a Grand Jury Subpoena for the books and records of Automation Transportation Corp. and Classic Truck Rental Corp., in which plaintiff was a principal stockholder and officer. These records have not been returned although more than two and one-half (2½) years have passed. No criminal action whatsoever has been taken against the plaintiff or the said corporations as a result of this investigation; indeed the plaintiff has never been arrested or convicted of any crime.

(b) Upon information and belief the STRIKE FORCE gave false, malicious and libelous information to a reporter of the Daily News who published articles linking RANGER BAKERS of which I am President, to the "Mob" and falsely stating that I am a front for the "Mob" in the operations of my company. None of

this is true, and my reputation has been damaged.

(c) Upon information and belief said defendant has disseminated rumors through its agents, employees or representatives that I have affiliations with the "Mob" which is not true, and that I was indicted in a tax fraud case which is not true.

(d) Upon information and belief, I believe that I and RANGER and perhaps other companies in which I have an interest are under continuing, illegal telephone, electronic and mail surveillance without good cause, and solely for the purpose of prying into my private life.

SIXTEENTH: Unless the defendant STRIKE FORCE and its employees, agents and representatives are permanently enjoined from further and continuing unlawful and unauthorized acts and from abusing its power against me personally I will suffer irreparable damages.

SEVENTEENTH: That the plaintiff MARK JACOBSON has no adequate remedy at law.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF THE PLAINTIFFS AND AGAINST THE DEFENDANTS IRS, SENZER, PALLILA, KEENAN AND BRENNAN

EIGHTEENTH: Plaintiffs repeat and reallege each

and every allegation contained in paragraphs "FIRST" through "SIXTEENTH" inclusive as if fully set forth herein.

NINETEENTH: That the said named defendants have engaged in a continuing series of acts designed solely to harass the plaintiffs, have singled them out for unusual and special treatment with respect to certain tax liabilities and have refused to apply the tax codes and regulations in the best interest of the public as well as these taxpayers. The following are some of the acts to which plaintiffs refer:

(a) In 1972 the IRS levied on the bank account of a company in which I was a principal stockholder and officer on an alleged claim of $360.00. There was over $40,000.00 in the bank account at the time. About two weeks later the IRS levied on one of our major customers for $700.00 allegedly due it, causing me great embarrassment. I paid both of these claims and at the end of the year my company received a check from the IRS for $1,060.00, proving that the levies were made in bad faith.

(b) More recently, because of the incessant pressures put upon our vendors and financing sources by the STRIKE FORCE and because of a sizeable backlog in our receivables, particularly monies owed us by New York City, RANGER fell in arrears on its withholding tax deposits and payments. On September 30, 1975, we received a statement of the tax due demanding

payment by October 9, 1975 and thereafter the following occurred:

(i) Negotiations for payment were undertaken by us on September 30, 1975 with the defendants SENZER and PALLILA. The parties agreed to continue negotiations the following day, October 1, 1975. At the very hour that negotiations were scheduled to commence the defendants SENZER and PALLILA with the consent and approval of defendants KEENAN and BRENNAN, nine days prior to the date when payment was due, filed a lien and levy on RANGER'S bank accounts and served levies upon several of RANGER'S customers including the City of New York.

(ii) Plaintiff met on that same afternoon with defendant KEENAN, Chief of the Collection Division, who is also defendants SENZER and PALLILA'S superior. Defendant KEENAN categorically refused to allow RANGER to liquidate its obligation in installments and insisted on full payment. All requests to extend to RANGER the same amenities given to similarly situated taxpayers were denied.

(iii) RANGER requested a meeting with defendant CHARLES BRENNAN, the District Director, and was subsequently advised by defendant KEENAN that the request was refused and that defendant BRENNAN approved the actions taken by his subordinates.

(iv) On October 2, 1975 RANGER tendered the amount of the assessment in full and demanded that the lien be

discharged and the levy on its payroll account be lifted so that its 500 employees would not go payless. RANGER was advised that the levy would not be released unless it paid additional penalties of approximately $16,000.00, which it paid in order to release its payroll account.

(v) In order to make the payment, RANGER obtained a loan from Automated Bread Dist. Corp., a company in which MARK JACOBSON is a stockholder and officer. Five days later, Automated Bread received notice from the IRS that its tax return for the year 1974 had been assigned for examination to an agent in the Brooklyn office of the IRS at 35 Tillary Street, where defendants KEENAN, BRENNAN and the STRIKE FORCE all maintain offices.

(vi) On October 7, 1975, RANGER received a visit from defendant SENZER accompanied by two other Revenue Agents who demanded payment of the 3rd Quarter Withholding Taxes in full prior to October 31, 1975, the last day when said return is due and prior to any assessment having been made against RANGER for taxes.

TWENTIETH: That the aforesaid acts of the said defendants are only a part of the acts committed by them presently known to the plaintiffs and said acts have been committed in bad faith and solely to destroy RANGER and MARK JACOBSON and are

not calculated to assure a method of collecting tax for the benefit of all taxpayers, but said acts are rather designed to destroy RANGER'S business and plaintiff MARK JACOBSON personally.

TWENTY-FIRST: Unless said defendant, IRS and its employees, agents and representatives are permanently enjoined from further and continuing harassment, and are directed to apply even-handed treatment and consideration to said plaintiffs, said plaintiffs will suffer irreparable damages.

TWENTY-SECOND: That the said plaintiffs have no adequate remedy at law.

AS AND FOR A FOURTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFFS
AGAINST ALL OF SAID DEFENDANTS

TWENTY-THIRD: Plaintiffs repeat and reallege each and every allegation contained in paragraphs "FIRST" through "TWENTY-FIRST" inclusive as if fully set forth herein.

TWENTY-FOURTH: That by virtue of the premises as aforesaid the plaintiffs constitutional rights under the Constitution and more particularly under the Fifth Amendment thereof have been denied them.

TWENTY-FIFTH: That unless the defendants are

enjoined from violating the plaintiffs' constitutional rights, said plaintiffs will suffer irreparable damages.

TWENTY-SIXTH: That the said plaintiffs have no adequate remedy at law.

AS AND FOR A FIFTH CAUSE OF ACTION
ON BEHALF OF PLAINTIFF MARK JACOBSON
AGAINST ALL OF SAID DEFENDANTS

TWENTY-SEVENTH: Plaintiffs repeat and reallege each and every allegation contained in paragraphs "FIRST" through "ELEVENTH", "FIFTEENTH", "NINETEENTH", "TWENTIETH", inclusive as if fully set forth herein.

TWENTY-EIGHTH: That by reason of the premises as aforesaid, plaintiff MARK JACOBSON'S civil rights under Title 42 U.S.C. Section 1981, and more particularly his rights to full and equal benefit of all laws and proceedings for the security of his person and property have been violated, by reason of which he has sustained damages in the sum of $1,500,000.00.

AS AND FOR A SIXTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFF MARK JACOBSON
AGAINST ALL OF SAID DEFENDANTS

TWENTY-NINTH: Plaintiff repeats and realleges

each and every allegation contained in paragraphs "FIRST" through "ELEVENTH", "FIFTEENTH", "NINETEENTH", "TWENTIETH" inclusive as if fully set forth herein.

THIRTIETH: That by reason of the premises as aforesaid, the defendants have conspired together to deprive plaintiff MARK JACOBSON of his civil rights under Title 42 U.S.C. Section 1985, by reason of which he has sustained damages in the sum of $1,500,000.00.

AS AND FOR A SEVENTH CAUSE OF ACTION
ON BEHALF OF THE PLAINTIFFS AGAINST
ALL OF SAID DEFENDANTS

THIRTY-FIRST: Plaintiffs repeat each and every allegation contained in paragraphs "FIRST" through "ELEVENTH", "FIFTEENTH", "NINETEENTH", "TWENTIETH" inclusive as if fully set forth herein.

THIRTY-SECOND: That in or about the times heretofore mentioned, and more particularly since October 29, 1974 when plaintiff RANGER acquired Silvercup, the defendants wantonly and in wilful and malicious disregard and violation of plaintiffs' rights, and with the deliberate intention of invading and destroying plaintiffs' rights, reputation, property and business, conspired and agreed among themselves to accomplish such purpose,

and to interfere with the plaintiff RANGER'S business operations.

THIRTY-THIRD: Pursuant to said conspiracy and scheme, defendants carried out and accomplished the purposes and aims thereof and pursuant to said conspiracy, have violated plaintiffs' rights, have invaded and destroyed plaintiffs' rights, reputation, property and business and the just fruits of their labor, investments and other expenditures expended in connection with said business.

THIRTY-FOURTH: Plaintiffs have acted in good faith throughout in carrying out their business operations and obligations, and solely by reason of the acts of the defendants as aforesaid, plaintiffs' business was destroyed all to their damage in the sum of $1,500,000.00.

THIRTY-FIFTH: The aforesaid acts, torts and conspiracy of all said defendants were done with the wilful intention to destroy and impair plaintiffs' property rights in their business and plaintiffs are therefore entitled to punitive damages in the sum of $3,000,000.00 as a consequence thereof.

WHEREFORE, the plaintiffs demand judgment against all of said defendants on the "FIRST" through the "FOURTH" Cause of Action for an order temporarily and permanently enjoining them from:

1. (a) harassing the plaintiffs, by disseminating to third persons false information, either orally or in writing that plaintiffs are "mob" controlled, "mob" affiliated or that any of its officers are members of any "mob".

(b) from contacting, either orally or in writing, RANGER'S customers, vendors or lending institutions or banks and advising them that RANGER is under investigation unless and until such time as an indictment has been returned against RANGER or any of its officers.

(c) from subpoenaing the records of corporations or companies in which plaintiff JACOBSON had or now owns stock or is an officer without first obtaining the approval of this Court to issue a subpoena, upon a written showing of facts, nor surmise or suspicion to warrant the issuance of such a subpoena.

(d) from wiretapping, or otherwise engaging in electronic surveillance or mail surveillance against plaintiffs without first obtaining the approval of this Court, upon a written showing of facts, not surmise or suspicion to warrant such actions.

(e) from denying to the plaintiffs even-handed treatment in the enforcement of tax laws and regulations and from refusing to accept without good cause RANGER'S proposal for payment of its taxes in installments as permitted by regulations of the Internal Revenue Code, and directing that defendants afford plaintiffs the same consideration they provide other taxpayers.

(f) from conspiring with other law enforcement agencies including the IRS and the individually named defendants, as well as others to harass plaintiffs and particularly plaintiff JACOBSON, and to deprive him of his constitutional and civil rights as well as plaintiffs right to even-handed treatment under all laws and regulations, privileges and immunities enacted to secure to them their person and property.

(g) from otherwise engaging in unlawful or harassing activities against plaintiffs, including the use of the IRS as a cats paw of the STRIKE FORCE against said plaintiffs.

2. On behalf of plaintiff JACOBSON against all said defendants on the "FIFTH" and "SIXTH" Causes of Action for a judgment in the sum of $1,500,000.00 on each said Cause of Action.

3. On behalf of the plaintiffs JACOBSON and RANGER against all the named defendants, on the "SEVENTH" Cause of Action plaintiffs demand compensating damages in the sum of $1,500,000.00 and punitive damages in the sum of $3,000,000.00.

All together with the costs and disbursements of this action.

IRVING MANDELL
Attorney for Plaintiff
Office & P.O. Address
42-25 21st Street
Long Island City, N. Y.
11101

ORDER TO SHOW CAUSE (Filed October 15, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

MARK JACOBSON and RANGER BAKERS, INC.,

Plaintiffs-Petitioners,

-against-

THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, THE INTERNAL REVENUE SERVICE OF THE UNITED STATES, MARTIN SENZER, Revenue Officer, DOMINICK PALLILA, Group Manager, RAYMOND KEENAN, Chief, Collection Division and CHARLES BRENNAN, District Director,

Defendants-Respondents.

- -x

ORDER TO SHOW CAUSE

No.

On reading and filing the verified complaint dated October 15, 1975, the affidavit of MARK JACOBSON sworn to October 15, 1975, together with exhibits annexed thereto let the respondents, THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, THE INTERNAL REVENUE SERVICE, MARTIN SENZER, DOMINICK PALLILA, RAYMOND KEENAN and CHARLES BRENNAN, show cause before this Court, at a Motion Part thereof, to be held at the United States Courthouse, located at 225 Cadman Plaza East, Borough of Brooklyn, City and State of New York, on the day of , 1975 at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for the following relief:

1. For an order pursuant to Rule 65 of the Federal Rules of Civil Procedure temporarily enjoining the defendants from:

(a) harassing the plaintiffs, by disseminating to third persons false information, either orally or in writing that plaintiffs are "mob" controlled, "mob" affiliated or that any of its officers are members of any "mob".

(b) from contacting, either orally or in writing, RANGER'S customers, vendors or lending institutions or banks and advising them that RANGER is under investigation unless and until such time as an indictment has been returned against RANGER or any of its officers.

(c) from subpoenaing the records of corporations or companies in which plaintiff JACOBSON had or now owns stock or is an officer without first obtaining the approval of this Court to issue a subpoena, upon a written showing of facts, nor surmise or suspicion to warrant the issuance of such a subpoena.

(d) from wiretapping, or otherwise engaging in electronic surveillance or mail surveillance against plaintiffs without first obtaining the approval of this Court, upon a written showing of facts, not surmise or suspicion to warrant such actions.

(e) from denying to the plaintiffs even-handed treatment in the enforcement of tax laws and regulations and from refusing to accept without good cause RANGERS proposal for payment of its taxes in installments as permitted by regulations of the Internal Revenue Code, and directing that defendants afford

plaintiffs the same consideration they provide other taxpayers.

(f) from conspiring with other law enforcement agencies including the IRS and the individually named defendants, as well as others to harass plaintiffs and particularly plaintiff JACOBSON, and to deprive him of his constitutional and civil rights as well as plaintiffs right to even-handed treatment under all laws and regulations, privileges and immunities enacted to secure to them their person and property.

(g) from otherwise engaging in unlawful or harassing activities against plaintiffs, including the use of the IRS as a cats paw of the STRIKE FORCE against said plaintiffs.

2. For other and further relief as to this Court may seen just and proper.

Pending this motion for a preliminary injunction and for the other relief requested, Let all proceedings on the part of the defendants-respondents, their agents, servants and/or employees against the plaintiffs be stayed.

Let service of a copy of this Order and the papers upon which it is granted, upon any agent, employee, or special attorney acting for the ANIZED CRIME Section at 35 Tillary Street, Brooklyn, New York be deemed sufficient and service upon any of the individually named defendants of the Internal Revenue Service, either at its offices at 74-09 37th Avenue, Jackson Heights, Queens, New York, or 35 Tillary

Street, on behalf of said Internal Revenue Service, on or before the day of October, 1975, be deemed sufficient.

U.S.D.J.

AFFIDAVIT OF MARK JACOBSON IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- -x

MARK JACOBSON and RANGER BAKERS, INC.,

Plaintiffs-Petitioners,

-against-

THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, THE INTERNAL REVENUE SERVICE OF THE UNITED STATES, MARTIN SENTER, Revenue Officer, DOMINICK PALLILA, Group Manager, RAYMOND KEENAN, Chief, Collection Division and CHARLES BRENNAN, District Director,

Defendants-Respondents.

AFFIDAVIT IN SUPPORT OF MOTION.

No.

- -x

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.:

MARK JACOBSON, being duly sworn, deposes and says:

1. I am one of the plaintiff-petitioners in this action and I am also the President of Ranger Bakers, Inc., ("RANGER"), the other petitioner-plaintiff. I am fully familiar with all the facts and circumstances and I submit this affidavit in support of the petitioners' application for injunctive relief.

2. I am 25 years old, married and the father of one child. I have never been charged with a crime during my lifetime, nor indicted for any criminal activity and certainly have never been convicted of any crime.

3. My record as a taxpayer is exemplary. I am current in my personal income taxes, and have never been audited

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to the best of my knowledge.

4. I am a major stockholder in several corporations other than RANGER, not one of which is delinquent in taxes to the Internal Revenue Service.

5. On or about October 29, 1974, RANGER acquired certain assets of Silvercup Bakers, Inc., then in Chapter XI for the sum of $101,000.00 plus certain tax liabilities of the debtor, together with payroll obligations previously incurred by it. (Exhibit I). That acquisition was approved by the Court and by the creditors committee after I had testified and been cross examined. At the time of the acquisition Silvercup was indebted to the Internal Revenue Service for withholding taxes in the sum of approximately $1,700,000.00 which obligation RANGER did not assume. Although the Internal Revenue Service was aware of this, neither it nor the Government opposed the sale.

6. Within a few weeks of RANGER'S acquisition of Silvercup, I quickly realized that the acquisition price was closer to $500,00.00 than the $100,000.00 that I had been led to believe represented the initial acquisition cost. The additional costs were due to back wages, pension, vacation benefits that I agreed to pay.

7. I was determined, however, to make a success of the business and plunged into its operations on a full time basis, often working 12 to 14 hours a day, for which I have not received a single penny by way of salary, bonus, stock dividend, or otherwise, to date.

8. At one time when it appeared that I would be forced to close operations because of a dispute with one of our union locals, the City and State intervened and through their good offices the job of our employees (approximately 500 persons) were saved.

9. Meanwhile, RANGER struggled to survive, notwithstanding its lack of credit among its vendors because of Silvercup's prior bankruptcy. RANGER faithfully paid its obligations to the Internal Revenue Service. Between October 29, 1974 when RANGER acquired Silvercup and March 30, 1975, the end of the first withholding quarter for 1975, RANGER paid withholding taxes in excess of $400,000.00 to the Internal Revenue Service.

10. In May 1975, at a time that my efforts to improve the financial condition of RANGER were beginning to show hopeful results, one Edward Kirkman, a reporter for the New York Daily News wrote a series of vicious, malicious, libelous and false articles in which he alleged that I was a front at Silvercup for "mob figure Sam Jacobson, who manages underworld kingpin Meyer Lansky's gambling cartel in this area". (Exhibit II). Sam Jacobson is my father. He is not a stockholder or officer of RANGER and has not received a single penny in wages, bonus or dividends from RANGER since it acquired Silvercup. My father has been a target of various law enforcement agencies for the past ten years and he has never been convicted of any crime! There is no doubt that it has cost the taxpayers millions of dollars to support a personal vendetta of one or more law enforcement agents.

11. When the series of articles appeared in the Daily News I wrote the Editor a letter requesting that he publish my reply, which he refused to do. We then asked to purchase space in the News in order to publish the true facts, because we felt that there would of necessity be many customers of our product as well as employees of the company who would have read Mr. Kirkman's articles. The News refused to sell us space to publish our reply.

12. My father then purchased space in the New York Times and the New York Post, both of which papers ran his statement which categorically denied the vicious, malicious statements of Mr. Kirkman. (Exhibit III).

13. However, it soon became clear from the flow of hate mail that we began to receive that great damage had been done to RANGER and its Silvercup products. As a direct result of these articles, RANGER lost customers, vendors refused to sell to us and our financing resources were frightened away.

14. There is no question in my mind that Mr. Kirkman obtained his distorted information from members of the ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE which is carrying on a personal vendetta against the Jacobson family. Since it had failed through legal means to convict my father of any crime, it employed the news media solely for the purpose of character assassination impugning my reputation and discrediting our product in the marketplace.

The "Strike Force" has adopted the long discredited McCarthy technique of charging me with guilt by association with my own father, (although it has failed to prove him guilty of anything). Thus the Strike Force and its representatives, who are presumably sworn to uphold the law have unilaterally decided that at the age of 25, my life, my career, my ambitions (and perhaps those of my wife and child) are to be destroyed because my name is Jacobson. I cannot believe that this is possible in a democratic society!

15. I charge that I am the victim of a conspiracy to destroy me and every business venture with which I am associated, or ever will be associated, and that the conspirators are the ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, ("STRIKE FORCE"), the INTERNAL REVENUE SERVICE, ("I. R. S.") and the individual defendants named herein.

16. It is no coincidence that only two days before Mr. Kirkman's false and vicious articles appeared in the News, on May 11, 1975, a subpoena was served upon RANGER to produce all its books and records before a Grand Jury, said subpoena having been issued on behalf of the United States Government by a Special Attorney of the STRIKE FORCE. (Exhibit IV). Those books and records were delivered to the Grand Jury on October 6, 1975, thus placing RANGER under additional operating difficulties and impedi ments.

17. But that is merely a recent event under the guise that a legitimate investigation is in progress. In February,

1973, two other corporations in which I was a principal stockhold er and officer, Automation Transportation, Inc. and Classic Truck Rental, Inc., were served with Grand Jury Subpoenas on behalf of the U. S. Government by a special attorney of the STRIKE FORCE. (Exhibit V). Although the books and records of those companies were turned over to the Grand Jury in the spirit of full cooperation, two and one-half years ago, the records have not been returned and nothing came of that investigation. (Exhibit VI). It was obviously another form of harassment, at best a fishing expedition.

18. More recently, on August 11, 1975 a Grand Jury Subpoena was served upon RANGERS' insurance broker by the STRIKE FORCE not only with respect to RANGER but also regarding Classic Truck Rental, Inc., (again), Key Foods Inc., myself and my father. (Exhibit VII). The obvious and sole purpose of this subpoena was to intimidate one of our largest customers, Key Foods, since our insurance broker writes their insurance as well as ours. Aside from the implicit threat to Key Foods not to do business with me, there is no justifiable or legal basis for this shotgun subpoena on our insurance broker. It is obviously and solely a tactic of unlawful harassment and intimidation by the STRIKE FORCE whose sole purpose is economic blackmail and destruction of me and RANGER BAKERS.

19. An attempt by RANGER to obtain a bank loan for

its operations within the past few weeks was declined by the lending institution after a visit by persons who represented themselves to be law enforcement officials investigating RANGER and Silvercup.

20. I have been advised that within the past few weeks our vendor of flour in Kansas City was visited by persons who represented themselves to be agents affiliated with the anti rackets section of the F.B.I. who made inquiries about RANGER, thereby implicitly suggesting that RANGER or I and/or Silvercup are involved in criminal activities. I must question how these F.B.I. men were able to learn the name of our flour vendor in Kansas City several weeks ago, in view of the fact that RANGER'S books and records were not delivered to the Grand Jury until October 6, 1975.

21. I must therefore conclude that RANGER'S phones are tapped, that its premises are under electronic surveillance, that my personal phone is tapped or that our mail is being intercepted and opened; or indeed that all of the foregoing is happening simultaneously.

22. Within the past few weeks a vendor with which RANGER had established an excellent credit relationship during the past year suddenly and without satisfactory explanation refused to sell to us except C.O.D. No satisfactory explanation was given to us by this vendor for its curtailment of our credit.

In view of what happened to our flour vendor, we suspect the reason for this action.

23. In retrospect, however, this must be expected when the Government, without judicial restraint is permitted to drop subpoenas on whomever it chooses under the guise that it is conducting a legitimate investigation into crime. But where are the criminals? And is ten years of investigating a sufficient time to unearth a crime? And how many holidays and junkets are innumerable members of the STRIKE FORCE and other agencies entitled to have at the taxpayer's expense as they pursue their alleged investigation? And how many millions of dollars are the taxpayers being forced to spend to satisfy the suspicious and personal ambitions of a handful of spiteful men?

24. I claim that I am the victim of harass ent, motivated by spite and that the defendants are acting without probable cause and in bad faith. My constitutional rights under the Fifth Amendment have been violated; my civil rights under Title 42 U.S.C. Sections 1981 and 1985 have been violated.

25. As will hereafter be shown, I also claim that irreparable damage has been done to RANGER BAKERS and that further irreparable damage will be done unless the ORGANIZED CRIME AND RACKETEERING SECTION of the UNITED STATES DEPARTMENT OF JUSTICE and all law enforcement agencies acting in concert with it, together with the INTERNAL REVENUE SERVICE and the individual defendants

are enjoined from further acts aimed at the destruction of RANGER and myself.

26. I come now to the role of the defendant INTERNAL REVENUE SERVICE and the individual defendants, who have acted as the cats paw of the STRIKE FORCE and who continue to so act. I charge that they have not applied the provisions and regulations of the Internal Revenue Code in an even-handed manner with respect to RANGER and myself.

27. Because of the articles leaked by the STRIKE FORCE to Kirkman of the Daily News and the intimidation by the STRIKE FORCE of our vendors and financing sources of which I am aware, (there must be others who have refused to deal with us after a friendly visit by a member of the STRIKE FORCE), RANGER sustained a severe blow to its program for an economic turnabout in its business operations. The lack of ready credit by vendors and banks cut into our cash flow. A major customer, the City of New York, (we supply bread to all the schools) curtailed its payment schedule further damaging our available cash supply. Although I obtained additional funds to finance RANGER'S operations they were inadequate to cover all our requirements. As a result, RANGER failed to make the required weekly withholding tax deposits and incurred a tax liability for the second quarter of 1975, in the sum of approximately $264,000.00. (Exhibit VIII).

28. We received notice of this deficiency on September 30, 1975 said notice being dated September 29, 1975. It called for payment on October 9, 1975. (Exhibit VIII). I immediately directed our attorney to arrange a meeting that very afternoon, (September 30, 1975) with representatives of the local office of the INTERNAL REVENUE SERVICE to discuss a method of paying the obligation. The meeting was held at RANGER'S office at 1:00 P. M. on September 30, 1975 and was attended on behalf of the IRS by defendants, MARTIN SEIZER, Revenue Officer, a Mr. GUTMAN, Revenue Officer and DOMINICK PALLILA, Group Manager of the Jackson Heights office of the IRS. I was present on behalf of RANGER, together with an attorney, IRVING MANDELL, ESQ.

29. We explained our plight to these defendants and proposed to begin making current deposits immediately and requested an opportunity to liquidate the arrears at the rate of $10,000.00 a week. The meeting lasted almost two hours and although the defendants gave no assurance that our proposal would receive favorable consideration by their superiors they agreed to continue the meeting at the IRS office in Jackson Heights on the following day, October 1, 1975 at 1:00 P. M. subject to a prior Court engagement of our attorney.

30. I am advised that the following morning, October 1, 1975 Mr. Mandell had our secretary phone these defend ants to move the appointment back to 2:00 P. M. which they agreed

to do. I met with Mr. Mandell at RANGER'S office shortly after 1:00 P.M. to drive him to the IRS and to our shock and dismay, we learned that the defendant INTERNAL REVENUE SERVICE and more particularly the defendants SENZER and PALLILA had filed a lien against RANGER and had levied on its payroll account at Manufacturers Hanover Trust Company (how did it get this information?) seizing over $100,000.00 earmarked to pay our 500 employees salaries on the following day.

31. This action had been taken by these defendants without prior notice to us, without prior warning, and at the very time that we were enroute to continue negotiations. It was clear that the defendants had familiarized themselves thoroughly with the tactics of the Japanese at Pearl Harbor and of other Axis leaders during World War II.

32. Our attorney called Mr. Pallila and was told that the decision had been taken by Mr. Pallila's superiors and that he had to follow their instructions and orders. Mr. Mandell immediately arranged a meeting with the defendant RAYMOND KEENAN, Chief of the Collection Division, and the Superior of SENZER and PALLILA, for 4:30 P. M. on October 1, 1975 at 35 Tillary Street, Brooklyn,N. Y., (coincidentally, also headquarters for the defendant, STRIKE FORCE). Mr. Keenan, a Mr. Gill, Mr. Mandell and I met at Mr. Keenan's office. From the inception of that meeting it became immediately clear that Mr. Keenan was in a rage against RANGER and against me personally. He refused to consider

any plan to pay the arrears in installments notwithstanding the provision of Sec. 31.6161 (a) (1) of the Regulations which provide:

> "Extention of time for paying tax.
>
> (a) Amount determined by taxpayer on return-(1) General rule.
>
> The Secretary or his delegate;;;may extend the time for payment of the amount of the tax shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof..."

33. Mr. Keenan would not be moved from his decision to seize RANGER'S payroll account and showed no interest or concern over the plight of the 500 Ranger employees whose payroll checks would have to be dishonored. There were also outstanding checks to vendors which would not be honored because of the levy on all of RANGER'S accounts.

34. We concluded our meeting with Mr. Keenan no further ahead than when we began. Our attorney requested a meeting with Mr. Keenan's superior, defendant CHARLES BRENNAN, the District Director. Mr. Keenan told us that such a meeting was discretionary with Mr. Brennan and that he did not believe that Mr. Brennan would agree to see us, but that he would forward our request to him and advise us the following morning. (Oct. 2, 1975).

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35. Promptly at 9:05 A.M. Mr. Keenan called to advise us that Mr. Brennan would not see us. Presumably the matter was beneath his dignity since it only involved $260,000.00. It must be remembered that Mr. Brennan's office and those to whom the power of collection had been delegated had allowed our predecessor Silvercup to beat the taxpayers out of $1,700,000.00. We, on the other hand, were offering to pay our debt to the last penny which undoubtedly confused the IRS and its representatives. On the other hand there is a strong possibility that a pre-determination had been made by the defendants acting in concert with each other to single out RANGER for "special consideration".

36. On October 2, 1975, payroll day for our employees, with the help of sympathetic customers, we raised the full sum of $264,000.00 based upon which the defendants had levied. Our attorney then phoned Mr. Keenan to advise him that we had the money and was told by Keenan that payment would have to be made through Mr. Pallila in the Jackson Heights office. A phone call was made to Mr. Pallila who advised us that additional penalties of approximately $16,000.00 had accrued (since that very morning) and that unless approximately $280,000.00 was paid the levy in the sum of approximately $264,000.00 would not be released. It is obvious that this decision was arbitrary, if not in fact, unlawful since payment in full of the lien and levy entitled RANGER to a release.

37. The sum of $280,715.62 as demanded was delivered to defendants PALLILA and SENZER on October 2, 1975, (Exhibit IX) at which time we learned for the first time that the IRS and the individual defendants had not only levied on RANGER'S payroll account but had also levied against seven of RANGER S customers including the City of New York. (Exhibit X). What is most important, however, is the manner in which the levies were made.

38. An examination of Exhibit X shows that a local Key Food store located in Forest Hills was levied rather than the main office of Key Food. This was also done with respect to Waldbaums and the A & P. Since any one store could obviously only owe RANGER several hundred dollars, rather than thousands owed by the parent of the entire chain of stores, it is clear that the intent of the IRS and the individual defendants was not to collect the debt but rather to tarnish and in fact destroy the reputation of RANGER. The local retailer could be counted on, by the IRS, to pass the news to RANGER'S driver, to the store's customers, to the store manager's wife and to competitors in the trade!

39. Thus it is crystal clear that these defendants were not at all concerned with their duties to all taxpayers to assure full collection of the taxes but had decided to destroy the name of RANGER, SILVERCUP and JACOBSON once and for all, no matter the cost. By these repressive acts, I have been deprived of all laws and proceedings for the security of my person under

the Fifth Amendment of the United States Constitution and my civil rights under Title 42 U.S.C. Sections 1981 and 1985 have been violated in that I have been deprived full and equal protection of all laws. I, as well as RANGER, am the victim of a conspiracy to destroy us.

40. To add insult to injury we received a phone call from Mr. SENZER on October 8, 1975 advising us that he wanted to meet with us. We invited him to RANGER'S plant on October 9, 1975. Mr. Senzer arrived accompanied by two other Revenue officers and they demanded payment of the third quarterly taxes for which a report and payment is not due until October 31, 1975. Our attorney asked Mr. Senzer to cite the statute or regulation under which this premature demand was made. Senzer was unable to city any statute or regulation to support his demand and since he stated that he had no authority to negotiate any other arrangements, no agreement was reached.

41. On October 23, 1975, a company in which I am a stockholder and officer named Automated Bread Dist. Corp., was served with a Notice by the defendant IRS that its tax return for the year 1974 had been assigned for examination by an agent at the Brooklyn office at 35 Tillary Street where defendants KEEHAN, BRENNAN and the STRIKE FORCE all maintain offices. Since checks by Automated Bread Dist. Corp., had been included in the prior payment (5 days earlier) of the $280 000.00 tax lien of the IRS, it is neither a mystery nor a coincidence that it should become the next target of an ongoing, continuous and abrasive investigation.

42. I should also note that in 1972 the IRS levied on a bank account of still another company in which I was a principal stockholder and officer based upon an alleged claim of $360.00. At the time of the levy there was over $40.000.00 in that company's bank account. About two weeks later, the IRS levied upon one of that company's major customers for $700.00 allegedly due it. Both of these acts caused me unnecessary embarrassment since I was never aware that an obligation was allegedly owed. I paid both of these claims and at the end of the year my company received a check from the IRS in the sum of $1,000.00 which clearly shows that the tax claims were concocted, the levies improper and the acts of the IRS were made in bad faith.

43. It is submitted that in view of the prior history of these defendants in seizing the assets of RANGER while professing to negotiate and the prior history of the IRS against me and other companies in which I have an interest and in view of the fact that the statements of the defendants are untrustworthy and in view of the fact that they have conspired with the co-defendant STRIKE FORCE to deprive RANGER of the even-handed treatment mandated by their laws and regulations, unless immediately enjoined, RANGER is in danger of irrevocable injury which will unquestionable cause it to cease operations. If this should occur 500 RANGER employees will lose their jobs, and the taxpayers will lose a considerable amount of revenue as well.

It is impossible to believe that such actions are not arbitrary and capricious, motivated out of spite, malice and a personal vendetta.

44. This Court may take judicial notice based on its own experience that delinquent taxpayers in these difficult economic times receive sensible and equitable consideration by IRS designed to safeguard the interest of the public in recovering the monies owed, while at the same time assisting struggling businesses from being destroyed with an attendant rise in unemployment. The IRS allowed Silvercup to accumulate a debt of $1,700,000.00 in taxes which it never collected. RANGER is not Silvercup; it has offered to pay its debt in installments and asks no greater consideration than other similarly situated tax payers, but it will accept no "special treatment" designed to destroy it.

45. We are clearly a target of the STRIKE FORCE which has violated our constitutional rights and our civil rights under Title 42, U.S.C. Sections 1981 and 1985.

46. The time is <u>now</u> for the Court to curtail this Police State mentality and conduct of the defendants. My personal life and that of my family as well as RANGER'S business existence are in danger of irreparable injury. I respectfully request this honorable Court to grant the following relief against said defendants; to enjoin them from temporarily and permanently:

(a) harassing the plaintiffs, by disseminating to third persons false information, either orally or in writing that

plaintiffs are "mob" controlled, "mob" affiliated or that any of its officers are members of any "mob".

(b) from contacting, either orally or in writing, RANGER'S customers, vendors or lending institutions or banks and advising them that RANGER is under investigation unless and until such time as an indictment has been returned against RANGER or any of its officers.

(c) from subpoenaing the records of corporations or companies in which Plaintiff JACOBSON had or now owns stock or is an officer without first obtaining the approval of this Court to issue a subpoena, upon a written showing of facts, not surmise or suspicion to warrant the issuance of such a subpoena.

(d) from wiretapping, or otherwise engaging in electronic surveillance or mail surveillance against plaintiffs without first obtaining the approval of this Court, upon a written showing of facts, nor surmise or suspicion to warrant such actions.

(e) from denying to the plaintiffs even-handed treatment in the enforcement of tax laws and regulations and from refusing to accept without good cause RANGER's proposal for payments of its taxes in installments as permitted by regulations of the Internal Revenue Code, and directing that defendants afford plaintiffs the same consideration they provide other taxpayers.

(f) from conspiring with other law enforcement agencies, including the IRS, and the individually named defendants

as well as others to harass plaintiffs and particularly plaintiff JACOBSON, and to deprive him of his constitutional and civil rights as well as plaintiffs right to even-handed treatment under all laws and regulations, privileges and immunities enacted to secure to them their person and property.

(g) from otherwise engaging in unlawful or harassing activities against plaintiffs, including the use of the IRS as a cats paw of the STRIKE FORCE against said plaintiffs.

No previous application for the relief herein requested has been made.

[redacted]

Sworn to before me this

15th day of October, 1975.

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EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT

EXHIBIT 1 - ORDER AUTHORIZING SALE OF ASSETS TO RANGER BAKERS, INC.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

In the Matter

of

SILVERCUP BAKERS, INC.,

Debtor.

----------x

In Proceedings for an Arrangement No. 74 B 377

ORDER AUTHORIZING SALE OF ASSETS TO RANGER BAKERS I

At Jamaica, New York, in said District, on the 29th day of October, 1974.

An order to show cause seeking authorization to sell certain assets of the debtor and debtor in possession to Ranger Bakers Inc. having duly come on to be heard before me on the 29th day of October, 1974, and upon said order to show cause dated October 23, 1974, and the application in support thereof, and it appearing that due notice has been given to all creditors and all other interested parties in accordance with the provisions of said order to show cause, and after hearing Levin & Weintraub, Esqs. in support thereof, and upon the testimony adduced at said hearing, and upon the subjoined consent of the attorneys for the Official Creditors' Committee and sufficient cause appearing therefor, it is

NOW, on motion of LEVIN & WEINTRAUB, attorneys for the debtor and debtor in possession.

ORDERED, that the debtor and debtor in possession be and they hereby are authorized to sell to Ranger Bakers Inc. all trade names, trademarks, service marks and all other copyrighted and patented properties of Silvercup Bakers, Inc., all trade route of Silvercup Bakers, Inc. and all other good will of Silvercup Bakers, Inc. related thereto for the sum of $100,000.00 free and clear of all liens and encumbrances which may exist thereon, and it is further

ORDERED, that the debtor and debtor in possession

Exhibit I

be and it hereby is authorized to sell to Ranger Bakers Inc. the interest of the debtor and debtor in possession in all machinery and equipment located at 42-25 21st Street, Long Island City, New York together with all inventory located at said premises for the sum of $1,000.00, said sale to be free and clear of any and all statutory liens and encumbrances which may exist thereon but subject to any and all contractual liens which may exist thereon, statutory liens, if any, to attach to the proceeds of this sale, and it is further

ORDERED, that Ranger Bakers Inc. be and they hereby are authorized to collect the accounts receivable of the debtor and debtor in possession existing as of the date of this order provided, however, that Ranger Bakers Inc. shall satisfy the obligations of the debtor and debtor in possession to secured creditors holding security interests in said accounts receivable as these accounts receivable are collected and shall pay over any excess realized on the collection of said accountrs receivable to the debtor and debtor in possession or to a Trustee in Bankruptcy if one is appointed in these proceedings.

ALBERT PARENTE
Bankruptcy Judge

The foregoing Order is hereby consented to FINKEL, NADLER & GOLDSTEIN, ESQS. and MARCUS & ANGEL, ESQS.

Marcus & Angel

Attorneys for Official Creditors' Committee

A TRUE COPY
BANKRUPTCY JUDGE
U. S. DIST. CT., E. D. N. Y.
OCT 29 1974
ATTEST: Miriam Dolin
JUDGE CLERK

Ordered that Ranger Bakers Inc. be and it hereby is directed to pay all tax liabilities of the debtor in possession representing monies withheld from salaries of employees for the payroll periods ending Oct. 19, 1974, Oct. 26, 1974, and through Oct. 29, 1974. and Further is direct to pay all payroll for the week ending Oct. 26 1974 and through Oct. 29, 1974.

Tie Mob Guy to Thick Slice of Silvercup

By EDWARD KIRKHAM

Mob figure Sam Jacobson, who manages underworld kingpin Meyer Lansky's gambling cartel in this area, has set up his son Mark, 25, as president of the Silvercup Bakery, while he actually runs the company from behind the scenes.

Silvercup is [illegible] a multimillion-dollar business, one of [illegible] supplying the New York City Board of [illegible] which has a $1.7 million bread and rolls contract with the Queens-based firm.

[illegible] investigation by [illegible] and revealed Sam Jacob[illegible] involvement with Silvercup, [illegible] with great fanfare, was [illegible] out of bankruptcy by [illegible] son, Mark, for $[illegible] [illegible] Sam, [illegible] [illegible] [illegible]

The Path of Jacobson To a Chunk of Silvercup

(Continued from page 2)

money to put his son in business. Outside of that I didn't know what their connections were," O'Dwyer said.

O'Dwyer learned of Sam Jacobson's connections with organized crime in a recent series, "The Gang Nobody Knows," in The News. "I was surprised when I read about Sam Jacobson in the paper. But I wasn't used by them because I had nothing to do with the purchase."

As for Sam Jacobson's involvement in the firm, O'Dwyer said: "Really that isn't up to me to make a moral judgment." My job here is to get jobs. I can't really pass judgment. I don't think it's right but I don't think it's right for the bankers who charge us 9.5% interest either."

Affirms Board's Decision

Although O'Dwyer admitted speaking to the Board of Education on behalf of Silvercup, Walter Kraus, director of the board's supportive services bureau, said that the acceptance of the Queens bakery was solely a board decision.

A New Jersey bakery had the board's business previously. They were not asked to submit a bid. "Frankly, the New Jersey outfit gave us pretty lousy service," said Kraus. However, that company submitted an unsolicited bid that was slightly under Silvercup's.

Conflicting Statements

O'Dwyer had to intercede with the Board of Education two years ago when Silvercup was charged with the delivery of green bread. "The Silvercup plant is pretty old," O'Dwyer told The News. "Not only was the bread green but plaster had fallen off the ceiling and found its way into bread being sent to schools."

Before Mark Jacobson took over Silvercup on Oct. 20, 1974, he was interviewed under oath by Federal Bankruptcy Justice Albert C. Parente. Jacobson followed Edward Hamilton on the stand. Hamilton, of 92-59 78th St., Jackson Heights, Queens, said that the principals and employes of Ranger Bakers (Mark's company) had a lot of experience in the baking industry. He was later contradicted by Mark, who said Ranger had been formed only three months before the sale.

The youthful Jacobson, in response to questions by lawyers and lawyers for creditors gave an account of his background and how he became a trucking tycoon while still a teenager.

The executive said that he was the sole owner and board member of Ranger. He said that there was no hidden ownership. He described himself as owner of two other companies, Automated Bread Distributors and Operative Cake, which he said, grossed $10 million in 1974.

"I distribute bread and cake to over 300 supermarkets on a daily basis," said Jacobson. He said that he would put $50,000 in working capital into Silvercup within 90 days.

Mark told how he started Automated Bread. "I built it from a business doing less than $1 million in gross sales to an operation now doing approximately $6 million a year." Jacobson said that he also had more than five years experience in the trucking business, starting as a summer employee when he was 16 years old.

Young Jacobson said that he worked for Albert Goldstein as an employee of Automated Transportation. He reported modestly that he was first "an under supervisor and then a supervisor." While still tender in years, Mark took over the trucking firm.

Mark landed an exclusive contract with Key Foods 100-store chain. "I put together the entire package of trucks and equipment that was needed," he said. "Automated Trucking was dormant when I took it over. I reactivated the corporation which still does the trucking for Key Foods."

Takes Advice From Father

Justice Parente, who later told The News that he was somewhat startled by young Jacobson's street tale, asked Mark if he received any help in business from his parents. "My father is anxious to me in respect to advising me and so forth and so on," he replied.

Parente said that he did not know who Sam Jacobson was at the time he questioned Mark. "I interrogated him because I had some question of where this money was coming from," said Parente. "I think at age 15 he already owned $3 or $4 million dollars' worth of businesses. But this was a sale and no other people wanted to buy.

"I wasn't quite satisfied with his answers, but this was a judicial sale of an asset and I had gone as far as I could," said Parente. There was also an assistant U.S. attorney present at the hearing who didn't know who Sam Jacobson was either. If the attorney had checked with the federal criminal division he would have found out.

In late 1972, Sam Jacobson and several others were brought to trial in Brooklyn Federal Court on charges of aiding Albert Goldstein — the same man who gave young Mark his start in the trucking business — to evade federal tax payments.

Goldstein, allegedly a heavy gambler and deeply in debt to Sam Jacobson, was charged with putting Sam on the payroll of four trucking companies he owned.

Goldstein's trucking firms delivered foodstuffs to Key Foods among others. He denied any financial interest in the chain. The trucking company owner was allegedly claiming $326,475 in salaries for persons not actually doing any work for his firms. Jacobson, over the four years covered in the indictment, already received $158,000 as "traffic manager" and later "clerk".

The trial resulted in a hung jury. Goldstein and Jacobson were acquitted on several counts.

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Exhibit II

EXHIBIT III - COPY OF N.Y. TIMES ANSWERING "DAILY NEWS" ARTICLE

THE NEW YORK TIMES, SUNDAY, MAY 18, 1975

TO THE LOYAL EMPLOYEES, CUSTOMERS AND FRIENDS OF SILVERCUP:

May 11th, 1975, Mr. Ed Kirkman, wrote a feature story which was published on page 2 in the Sunday News under the following captions:

1. Tie Mob Guy to Thick Slice of Silvercup.
2. Tie Mob Guy Jacobson to a chunk of Silvercup.

The article characterizes me as a "mob figure who manages underworld king pin Meyer Lansky's gambling cartel in this area."

With response to this aforesaid false statement, I state that I have never met, known, spoken to, have done business with Meyer Lansky, nor have I ever visited him in any hospital as Mr. Kirkman had previously falsely written.

The article by Mr. Kirkman is a malicious and spiteful attempt to injure the reputation of Silvercup. He will not succeed nor will those who have put him up to writing this vicious article.

I have indeed assisted my son, as any normal and responsible father would, in getting started in business. My son works 20 hours a day and since October, 1974, has devoted considerable amount of his time and energy to saving the jobs of at least 400 employees of Silvercup and probably jobs of many hundreds of other persons who rely on its services.

During this period of time he has not drawn a penny in salary nor have I, notwithstanding Mr. Kirkman's statement that I run Silvercup from behind the scenes of Silvercup as "Vice President."

My son Mark has written directly to the editor of the Daily News refuting the half truths and malicious statements and innuendo contained in Mr. Kirkman's malicious article. He has requested that his letter be published.

I challenged the News to do so.

I have purchased this space because I believe that the Daily News does not have the courage to publish my son's letter, thereby allowing its readers to see for themselves where the truth lies. The Daily News has refused to publish this advertised statement although I have offered to pay for the cost of the space. I feel a duty to Silvercup employees and their families and to the public which recognizes the high standard of its product to see that the truth is told.

Sam Jacobson
150 E. 61st St.
New York, N.Y.

FOR THE

EXHIBIT IV - SUBPOENA FOR RANGER BAKERS, INC.
EASTERN DISTRICT OF NEW YORK

Custodian of Records
To Ranger Bakers Inc., dba
Silvercup Bakers, Inc.
42-25 25th St.
Queens, N.Y.

You are hereby commanded to appear in the United States District Court for the Eastern District of New York at 225 Cadman Plaza East, Rm. 479-80 in the city of Brooklyn on the 2nd day of June 1975 at 10 o'clock AM. to testify before the Grand Jury and bring with you[1]

all books and records, documents and correspondence, including but not limited to:

general ledger, cash receipts ledger, cash disbursements ledger, cancelled checks and check stubs, accounts payable ledger, including subsidiary ledger, accounts receivable ledger, including subsidiary ledger, loans payable ledger, loans receivable ledger, corporation minutes, stock transfer ledger, sales journal, and payroll journal, together with any and all supporting documents, for the period 1/1/74 to date.

This subpoena is issued on application of the U.S. Government.

RICHARD L. SHANLEY
SPECIAL ATTORNEY
(212) 596-3021

ORDERS

..... Clerk.

Date ..... May 9 ....., 1975 ..

By Stuart Gruzzuto
Deputy Clerk

1. Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things, in which case the documents and things should be designated in the blank space provided for that purpose.

RETURN

Received this subpoena at ..... on .....
and on ..... at ..... I served it on the
within named .....
by delivering a copy to ..... and tendering[2] to ..... the fee for one day's attendance and the mileage allowed by law.

.....

Date ....., 19.....

By .....

Service Fees
Travel ..... $
Services .....
Total ..... $

2. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

BEST COPY AVAILABLE

Exhibit IV

EXHIBIT V - SUBPOENA FOR CLASSIC TRANSPORTATION CORP.

AO Form No. 110 (Rev. 5-62) Subpoena to Testify Before Grand Jury

United States District Court

FOR THE

Eastern District of New York

To Automatic Transportation Corporation
8025 Avenue D
Brooklyn, NY

You are hereby commanded to appear in the United States District Court for the Eastern District of New York at Federal Building, Room 327-A 35 Tillary Street in the city of Brooklyn, NY on the 21st day of February 19 73 at 10:00 o'clock A. M. to testify before the Grand Jury and bring with you[1]

all payroll records including quarterly payroll tax returns, Forms W2 and W3, cash receipts, cash disbursement books, general ledgers from date of inception to December 31, 1972.

Corporate minute books, stock record books and all other records showing stock ownership.

This subpoena is issued on application of the United States Government

Michael D. Follack, Special Attorney
Telephone 212-596-3021 or 3079

[illegible]

Date February 2, 19 73

By [signature] Clerk

Deputy Clerk

1. Strike the words "and bring with you" unless the subpoena is to require the production of documents or tangible things in which case the documents or things should be designated in the blank space provided for that purpose.

RETURN

Received this subpoena at and on at on
within named I served it on the
by delivering a copy to and tendering[2] to
the fee for one day's attendance and the mileage allowed by law.

Date , 19

By

Service Fees
Travel $
Services
Total $

BEST COPY AVAILABLE

Exhibit V

2. Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such fees (Rule 17(b), Federal Rules Criminal Procedure)

EXHIBIT VI - LETTER FROM IRVING MANDELL TO U.S. SPECIAL ATTORNEY MICHAEL B. POLLACK

February 21, 1973

United States District Court
Federal Building
35 Tillery Street
Brooklyn, New York

Att: Michael B. Pollack, Special Attorney
Room 327-A

Dear Mr. Pollack:

This will confirm our telephone conversation yesterday, pursuant to which I advised you that I have been consulted by my clients with respect to subpoenas allegedly served upon them on February 14, 1973, said subpoenas having been delivered by your office to the U.S. Marshal on February 8, 1973.

I have advised you that my clients are prepared to cooperate with your office with respect to the foregoing notwithstanding the fact that the corporations are improperly named in the subpoenas and that the subpoenas were not served upon officers or agents of the corporation.

We have agreed that the books and records requested will be presented to you on February 28, 1973 together with xerox copies thereof and that you will return the original books of entry to us within a week since they are needed for the every day operations of the business of my clients.

For your information, the correct names of the corporations sought to be subpoenaed are Classic Truck Renting Corp., not Classic Transportation Corporation and Automation Transportation Corp. not Automatic Transportation Corporation.

I assure you that my clients are prepared to cooperate with your office in this matter.

Very truly yours,

/hs

IRVING MANDELL

AO Form No. 110 (Rev. 5/68) Subpoena to Testify Before Grand Jury

EXHIBIT VII - SUBPOENA FOR LOUIS WALLACH

50a

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

To Louis Wallach
L.W.C. Agency
9 Freer Street
Lynbrook, New York

35 Tillary St
Rm 327A

You are hereby commanded to appear in the United States District Court for the Eastern District of New York at 35 Tillary Street, Room 327-A in the city of Brooklyn on the 8th day of September 1975 at 10 o'clock AM to testify before the Grand Jury and bring with you' including but not limited to all policies, contracts, correspondence, payment records and memoranda, relating to transactions and accounts with Silvercup Bakers, Inc., Ranger Bakers, Inc., Classic Trucking Co., Rojo Trucking Co., Key Foods, Inc., Mark Jacobson and Samuel Jacobson. —

10AM — Monday

Tel# 371 5400 — Stanley Schlesinger —

This subpoena is issued on application of the United States Government

Richard L. Shanley
Special Attorney
212-596-3091

LEWIS ORGEL
Clerk

Date August 11, 1975

By _____ Deputy Clerk

1 Bring the above and bring with you' is not for subpoenas to require the production of documents or tangible things in which case the documents and things should be designated in the blank space provided for that purpose.

RETURN

Received this subpoena at _____ on _____
and on _____ at _____ I served it on the
within named _____
by delivering a copy to _____ and tendering to _____ the fee for one day's attendance and the mileage allowed by law.

~~[illegible]~~

Date _____, 19 .

By _____

Service Fees
Travel $
Services
* Total $

* Fees and mileage need not be tendered to the witness upon service of a subpoena issued on behalf of the United States or an officer or agency thereof. 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs. (Rule 17(b), Federal Rules Criminal Procedure).

Exhibit VII

Department of the Treasury
Internal Revenue Service Center

P.O. BOX 600
HOLTSVILLE, NY. 11742

Date of This Notice
SEP. 29, 1975

1101 161

Employer Identification Number
11-2338063

Document Locator Number
11141-235-56100-5

Form Number: 941
Tax Period Ended: JUNE 30, 1975

If you inquire about your account, please refer to these numbers or attach a copy of this notice.

HZ 112338063 01 7506 670

RANGER BAKERY INC
42 25 21ST ST
LONG ISLAND CITY, NY 11101

Balance is Payable By OCT. 9, 1975

Request For Payment

The statement at the right shows that a payment is due on your account. Please make the payment by the due date shown above.

If our statement does not agree with your records, the information on the back of this notice will tell you what to do.

If we included any penalty or interest charges, an explanation of the items will be found on the back. (Code numbers in the box at lower right will guide you to the explanations which apply.)

Make your check or money order for the above amount payable to Internal Revenue Service. Please show your employer identification number on it and mail it with this notice in the envelope enclosed for your convenience.

Thank you for your cooperation.

• PLEASE ATTACH CHECK OR MONEY ORDER HERE

FEDERAL EMPLOYMENT TAXES

TAX STATEMENT

Total Tax on Return	$	394,844.37
Total Credits		136,714.59-
Plus Penalty*		2,581.30
Plus Interest*		3,781.78
BALANCE DUE IRS →	$	264,492.86
Subtract Payments We Haven't Included		
Pay Adjusted Balance	$	

*See these items on the back for an explanation of interest or penalty charges.

07.09

FORM 4192 (Part 1) (Rev. 8-74)

EXHIBIT VIII - IRS REQUEST FOR PAYMENT

51a

EXHIBIT IX - RECEIPT

2

RECEIPT FOR PAYMENT OF TAXES

This is your receipt for Federal taxes listed below.

Receipt Number 149096-32

Taxpayer Identifying Number	Check Digit	TDA	Notice	Other
11-2338063		✓		

Tax Form Number	Cash	Check	Money Order
941		✓	

Period Ended	District and Area Office Code	Date
06-30-75	110122	10-02-75

Received From: (Print Name)

RANGER BAKERS INC.
42-25 21 ST.
L.I.C. N.Y. 11101

Assessed Amount	$ 267,803.13
Accrued Penalty	$
Accrued Interest	$
Fees TC 360	$ 6.00
Other TC 180	$ 12,906.49
Total Amount Received	$ 280,715.62

Signature of IRS Employee: Marlon Singh

Form 809 Part 2 (Rev. 3-74)

EXHIBIT X - RELEASE OF LEVY AGAINST GREAT ATLANTIC & PACIFIC TEA CO.

FORM 668-D (REV. MAY 1967)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

RELEASE OF LEVY

To:

Great Atlantic & Pacific Tea Co. Inc.
420 Lexington Ave
New York, NY 10017

2 Paragan Drive
Montvale, N. J.

On the 1st day of October 19 75, a notice of levy was served upon you at 4365 B'way N. Y. C. 10040, and demand was made for the surrender of all property, rights to property, moneys, credits, and bank deposits then in your possession, to the credit of, belonging to, or owned by Ranger Dakers Inc. of 42-25 21 St. L. I. C. NY 11101, for unpaid internal revenue taxes together with additions provided by law which, at the time of the levy, amounted to the sum of $ 267,809.13.

Under the provisions of section 6343 of the Internal Revenue Code, property, rights to property, moneys, credits, and bank deposits in excess of the sum of $ - 0 - are hereby released from the levy.

Dated at 74-09 37 Ave. Jackson Hts. NY 11372 this 2 day of October, 19 75

SIGNATURE	TITLE
Martin Senzer Mart Senz	Revenue Officer

INTERNAL REVENUE CODE

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY

(a) Release of levy. - It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

120 D

EXHIBIT X - RELEASE OF LEVY AGAINST WALDBAUM'S INC.

FORM 668-D (REV. MAY 1967)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

RELEASE OF LEVY

To:

Waldbaum's Inc
35-09 Francis Lewis Blvd
Bayside, NY 11358

On the 1st day of October 19 75, a notice of levy was served upon you at above address, and demand was made for the surrender of all property, rights to property, moneys, credits, and bank deposits then in your possession, to the credit of, belonging to, or owned by Ranger Bakers Inc of 42-25 21 St. L. I. C. NY 11101, for unpaid internal revenue taxes together with additions provided by law which, at the time of the levy, amounted to the sum of $ 267,809.13.

Under the provisions of section 6343 of the Internal Revenue Code, property, rights to property, moneys, credits, and bank deposits in excess of the sum of $ - 0 - are hereby released from the levy.

Dated at 74-09 37 Ave. Jackson Hts. NY 11372 this 2 day of October, 19 75

SIGNATURE	TITLE
Martin Senzer	Revenue Officer

INTERNAL REVENUE CODE

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY

(a) Release of levy. - It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

GPO : 1971 O [illegible]

FORM 668-D (REV. 5-67)

EXHIBIT X - RELEASE OF LEVY AGAINST ASSOCIATED FOODSTORES CO-OPERATORS INC.

FORM 668-D (REV. MAY 1967)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

RELEASE OF LEVY

To:

Associated Food Stores Co-Operative Inc
179-45 Brinkrhoff Ave
Jamaica, NY 11433

On the 1st day of October 1975, a notice of levy was served upon you at above address, and demand was made for the surrender of all property, rights to property, moneys, credits, and bank deposits then in your possession, to the credit of, belonging to, or owned by Ranger Bakers Inc. of 42-25 21 St. L. I. C. NY 11101, for unpaid internal revenue taxes together with additions provided by law which, at the time of the levy, amounted to the sum of $ 267,809.13.

Under the provisions of section 6343 of the Internal Revenue Code, property, rights to property, moneys, credits, and bank deposits in excess of the sum of $ - 0 - are hereby released from the levy.

Dated at 74-09 37 Ave. Jackson Hts. NY 11372 this 2 day of October, 1975

SIGNATURE	TITLE
Martin Senzer	Revenue Officer

INTERNAL REVENUE CODE

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY

(a) Release of levy. - It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

EXHIBIT X - RELEASE OF LEVY AGAINST SCATURRO FOOD MARKET

FORM 668-D
(REV. MAY 1967)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

RELEASE OF LEVY

To:

Scaturro Food Market
300 Wykoff Ave
Brooklyn, NY 11227

On the 1st day of October 19 75, a notice of levy was served upon you at above address, and demand was made for the surrender of all property, rights to property, moneys, credits, and bank deposits then in your possession, to the credit of, belonging to, or owned by Ranger Bakers Inc. of 42-25 21 St. L. I. C. NY 11101, for unpaid internal revenue taxes together with additions provided by law which, at the time of the levy, amounted to the sum of $ 267,809.13 .

Under the provisions of section 6343 of the Internal Revenue Code, property, rights to property, moneys, credits, and bank deposits in excess of the sum of $ - 0 - are hereby released from the levy.

Dated at 74-09 37 Ave. Jackson Hts. NY 11372 this 2 day of October, 19 75

SIGNATURE	TITLE
Martin Senzer	Revenue Officer

INTERNAL REVENUE CODE

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY

(a) Release of levy. - It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

GPO : 1971 O - 442-072

FORM 668-D (REV. 5-67)

EXHIBIT X - RELEASE OF LEVY AGAINST SLOANS SUPERMARKETS, INC. 57a

FORM 668-D
(REV. MAY 1967)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

RELEASE OF LEVY

To:

Sloan's Supermarkets Inc
2 Bennett Ave
New York City, N. Y. 10033

On the 1st day of October 19 75, a notice of levy was served upon you at above address, and demand was made for the surrender of all property, rights to property, moneys, credits, and bank deposits then in your possession, to the credit of, belonging to, or owned by Ranger Bakers Inc. of 42-25 21 St. L. I. C. NY 11101, for unpaid internal revenue taxes together with additions provided by law which, at the time of the levy, amounted to the sum of $ 267,809.13.

Under the provisions of section 6343 of the Internal Revenue Code, property, rights to property, moneys, credits, and bank deposits in excess of the sum of $ - 0 - are hereby released from the levy.

Dated at 74-09 37 Ave. Jackson Hts. NY 11372 this 2 day of October, 19 75

SIGNATURE	TITLE
Martin Senzer	Revenue Officer

INTERNAL REVENUE CODE

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY

(a) Release of levy. - It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

GPO : 1971 O - [illegible]

FORM 668-D (REV. 5-67)

EXHIBIT X - RELEASE OF LEVY AGAINST KEYFOOD SUPERMARKETS

FORM 668-D (REV. MAY 1967)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

RELEASE OF LEVY

To:

Keyfood Supermarkets
116-34 Queens Blvd
Forest Hills, NY 11375

On the 1st day of October 19 75, a notice of levy was served upon you at above address, and demand was made for the surrender of all property, rights to property, moneys, credits, and bank deposits then in your possession, to the credit of, belonging to, or owned by Ranger Bakers Inc. of 42-25 21 St. L. I. C. NY 11101, for unpaid internal revenue taxes together with additions provided by law which, at the time of the levy, amounted to the sum of $ 267, 809.13.

Under the provisions of section 6343 of the Internal Revenue Code, property, rights to property, moneys, credits, and bank deposits in excess of the sum of $ - 0 - are hereby released from the levy.

Dated at 74-09 37 Ave. Jackson Hts. NY 11372 this 2 day of October, 19 75

SIGNATURE	TITLE
Martin Senzer	Revenue Officer

INTERNAL REVENUE CODE

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY

(a) Release of levy. - It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

EXHIBIT X - RELEASE OF LEVY AGAINST MANUFACTURERS HANOVER TRUST CO.

FORM 668-D (REV. MAY 1967)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

RELEASE OF LEVY

To:

Manufacturers Hanover Trust Co
225 Havemeyer Street
Brooklyn, NY 11211

On the 1st day of October 1975, a notice of levy was served upon you at Jackson Hts, Branch - 82 st. & No. Bld., and demand was made for the surrender of all property, rights to property, moneys, credits, and bank deposits then in your possession, to the credit of, belonging to, or owned by Ranger Bakers Inc of 42-25 21st St. L. I. C. NY 11101, for unpaid internal revenue taxes together with additions provided by law which, at the time of the levy, amounted to the sum of $ 267,809.13.

Under the provisions of section 6343 of the Internal Revenue Code, property, rights to property, moneys, credits, and bank deposits in excess of the sum of $ - 0 - are hereby released from the levy.

Dated at 74-09 37 Ave. Jackson Hts., NY 11372 this 2 day of October, 1975

SIGNATURE	TITLE
Martin Senzer	Revenue Officer

INTERNAL REVENUE CODE

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY

(a) Release of levy. - It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

GPO : 1971 O - 442-672

EXHIBIT X - RELEASE OF LEVY AGAINST CONTROLLERS OFFICE, CITY OF N.Y.

FORM 668-D (REV. MAY 1967)

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE

RELEASE OF LEVY

To:

Controllers Office
City of N. Y. Finance Administration
Municipal Building, Room 727
New York, N. Y. 10007

On the 1st day of October 1975, a notice of levy was served upon you at above address.

and demand was made for the surrender of all property, rights to property, moneys, credits, and bank deposits then in your possession, to the credit of, belonging to, or owned by Ranger Bakers Inc.

of 42-25 21 St. L. I. C. NY 11101, for unpaid internal revenue taxes together with additions provided by law which, at the time of the levy, amounted to the sum of $ 267,809.13.

Under the provisions of section 6343 of the Internal Revenue Code, property, rights to property, moneys, credits, and bank deposits in excess of the sum of $ - 0 - are hereby released from the levy.

Dated at 74-09 37 Ave. Jackson Heights, NY 11372 this 2 day of October, 19 75

SIGNATURE	TITLE
Martin Senzer	Revenue Officer

INTERNAL REVENUE CODE

SEC. 6343. AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY

(a) Release of levy. - It shall be lawful for the Secretary or his delegate, under regulations prescribed by the Secretary or his delegate, to release the levy upon all or part of the property or rights to property levied upon, where the Secretary or his delegate determines that such action will facilitate the collection of the liability, but such release shall not operate to prevent any subsequent levy.

GPO : 1971 O - 402-073

FORM 668-D (REV. 5-67)

1 161 Washington Ave., Albany, N.Y. 12210
2 66 Sewall St., Augusta, Maine 04330
3 JFK Federal Bldg., Boston, Mass. 02203
4 P.O. Box 991, Brooklyn, N.Y. 11202
5 111 [illegible] St., Buffalo, N.Y. 14202
6 11 Elmwood Ave., Burlington, Vt. 05401
7 450 Main St., Hartford, Conn. 06115
8 P.O. Box 3100, New York, N.Y. 10008
9 80 Daniel St., Portsmouth, N.H. 03801
10 130 Broadway, Providence, R.I. 02903

61a

Department of the Treasury

Address any reply to DISTRICT DIRECTOR at office No. ____

EXHIBIT XI - IRS NOTICE OF EXAMINATION SENT TO AUTOMATED BREAD DISTRIBUTORS

District Director
Internal Revenue Service

Date:	In reply refer to:
10-7-75	BUF

Automated Bread Distributors,
5701 Foster Avenue
Brooklyn N.Y. 11236

Tax Return or Document: 1120

Year: 4/30/74

Agent: [illegible] Bennett

Telephone Number: 596 6365

Dear Taxpayer:

Your above described tax return or document for the year indicated has been assigned to the above named agent for examination.

Please communicate with the agent, using the address or telephone number shown above, to arrange a date that will be mutually satisfactory.

Your reply within 10 days will be appreciated.

Sincerely yours,
District Director

BEST COPY AVAILABLE

SUMMONS IN A CIVIL ACTION

(Former) D. C. Form No. 45 Rev. (6-49)

CIV. 1 (2-64)

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. 75C 1718

MARK JACOBSON and RANGER BAKERS, INC.,

Plaintiff S-Petitioners

v.

THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, THE INTERNAL REVENUE SERVICE OF THE UNITED STATES, MARTIN SENZER, Revenue Officer, DOMINICK PALLILA, Group Manager, RAYMOND KEENAN, Chief, Collection Division and CHARLES BRENNAN, District Director,

Defendant s-Respondents

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon IRVING MANDELL,

plaintiff's attorney , whose address is 42-25 21st Street, Long Islard City, New York, 11101

an answer to the complaint which is herewith served upon you, within 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Lewis Orgel
Clerk of Court.

Rose Mollo
Deputy Clerk.

Date: October 15, 1975

[Seal of Court]

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

ORDER TO SHOW CAUSE (Filed October 22, 1975)

CIS:PKP:ms
F. #752233

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - -

FURTHER ORDERED that service of a copy of this order to show cause and the annexed affidavits on the attorneys for the plaintiffs by placing the same in a properly postpaid franked envelope addressed to IRVING MANDELL, 42-25 21st Street, Long Island City, New York 11101 or, in the alternative by delivery of a copy of this order to show cause to the office of IRVING MANDELL, 42-25 21st Street, Long Island City, New York, before on the day of October, 1975, shall be deemed good and sufficient service.

Dated: Brooklyn, New York
October , 1975

HON. EDWARD R. NEAHER
United States District Judge

CIS:PKP:me
752233

AFFIDAVIT OF PROSPER K. PARKERTON IN SUPPORT OF MOTION 65a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

MARK JACOBSON and RANGER BAKERS, INC.,

Plaintiffs-Petitioners,

- against -

THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, et al.,

Defendants-Respondents.

- X

AFFIDAVIT

Civil Action
No. 75 C 1718

PROSPER K. PARKERTON, being duly sworn, deposes and says:

1. That he is an Assistant United States Attorney, Eastern District of New York, and he is familiar with the proceedings relating to the civil matter to date.

2. That as appears from the affidavit of THOMAS L. SHANLEY attached hereto there is presently an investigation being conducted by the Department of Justice and evidence being submitted to a Special Grand Jury relating to possible criminal violations concerning SILVERCUP BAKERS, INC., and its successor corporation, RANGER BAKERS, INC. and others.

3. That in connection with these investigations subpoenas were issued to RANGER BAKERS, INC. and RANGER BAKERS, INC. d/b/a SILVERCUP BAKERS, INC.,

4. That Rule 6(e) of the Federal Rules of Criminal Procedure provides for secrecy for grand jury proceedings except as provided therein.

5. That there is little doubt that disclosure of the information sought by the subpoena duces tecum delivered to the Organized Crime and Racketeering Section of the United States Department of Justice would require

either direct or indirect disclosure of proceedings before the Grand Jury or to be brought before the Grand Jury, giving to the plaintiffs herein an advantage not enjoyed otherwise. (A copy of said subpoena duces tecum is attached hereto and made a part hereof as Exhibit "A".)

6. That upon information and belief the copy of the subpoena duces tecum delivered to the Organized Crime and Racketeering Section of the United States Department of Justice was not issued by a clerk of this court and does not bear the seal of this court.

7. That upon information and belief delivery of said subpoena was not accompanied by tendering the witness fee for one day.

8. That pursuant to Rule 11(b) of the General Rules of the United States District Court for the Eastern District of New York, this affidavit is submitted showing cause for the issuance for this ex-parte order and states that no previous application for similar relief has been made prior hereto in this matter.

Prosper K. Parkerton
PROSPER K. PARKERTON

Sworn to before me this
[illegible] day of October, 1975

[illegible]

EVELYN SOMMER
Notary Public, State of New York
No. 24 4502158
Qualified in Kings County
Commission Expires March 30, 19[illegible]

EXHIBIT A -- SUBPOENA DUCES TECUM ANNEXED TO FOREGOING AFFIDAVIT

8 — Subpoena Duces Tecum, Blank Court, with Witness' Stipulation to remain subject to Attorney's call. 6-74

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UNITED STATES ~~SOUTHERN~~ DISTRICT COURT
~~SOUTHERN DISTRICT~~ EASTERN DISTRICT OF NEW YORK

Index No. 75C 1216

MARK JACOBSON and RANGER BAKERS, INC.,

Plaintiff(s)

against

THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, et al,

Defendant(s)

Calendar No

JUDICIAL SUBPOENA DUCES TECUM

The People of the State of New York

TO THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, 35 Tillary Street, Brooklyn, New York

GREETING:

WE COMMAND YOU, That all business and excuses being laid aside, you and each of you appear and attend before Hon. Edward R. Neaher, at his Courtroom at 225 Cadman Plaza East, Brooklyn, N. Y. on the 24th day of October 19 75 at 3:00 o'clock, in the after noon, and at any recessed or adjourned date to give testimony in this action on the part of the plaintiffs

and that you bring with you, and produce at the time and place aforesaid, ~~XXXXXX~~ all records, documents, memoranda, writings and telephone logs whatsoever in your possession, involving communications between any attorney or special attorney or other representative in your office and representatives of the Internal Revenue Service, and more particularly the named defendants herein, involving the plaintiffs or either of them during 1974 and 1975 to date.

All records, documents, memoranda, writings, diaries, telephone logs disclosing communications between representatives of your office and Edward Kirkman of the N. Y. Daily News.

All records, documents, memoranda, or any writings whatsoever disclosing the names of Ranger's vendors, customers and banks visited by your employees or agents during 1974 and 1975 to date

now in your custody, and all other deeds, evidences and writings, which you have in your custody or power, concerning the premises.

Failure to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

WITNESS, Honorable EDWARD R. NEAHER, one of the Judges of said Court, at 225 Cadman Plaza East, Brooklyn, New York, the 20th day of October, 19 75

IRVING MANDELL

Attorney(s) for Plaintiffs

Office and Post Office Address

42-25 21st Street
Long Island City, N. Y.
(212) 784-6200

C.A.A. 1 A

AFFIDAVIT OF RICHARD L. SHANLEY IN SUPPORT OF MOTION

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----------x

MARK JACOBSON AND RANGER BAKERS, INC.

Plaintiffs

-v-

THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, ET AL.

Defendants

AFFIDAVIT

75 C 1718

----------x

RICHARD L. SHANLEY, being duly sworn, deposes and says:

1. The matters stated herein are based either upon his personal knowledge, information provided by Special Attorneys working under his supervision and control, or records kept in the ordinary course of business of the United States Department of Justice, Organized Crime and Racketeering Section.

2. Your deponent has been the Assistant Attorney in Charge, Brooklyn Strike Force, Organized Crime and Racketeering Section, United States Department of Justice, since December, 1974.

3. Since May of 1975, a Special Grand Jury convened in the Eastern District of New York has been investigating possible criminal violations involving Silvercup Bakers, Inc. and its successor corporation, Ranger Bakers, Inc.

4. Your deponent has been the attorney in charge of this investigation.

5. The subject inquiry of the aforesaid Grand Jury encompasses possible false statements and concealment of facts in relation to the bankruptcy of Silvercup Bakers, Inc.; possible interference with commerce by extortion; possible participation in the conduct of enterprises in interstate commerce by and through the collection of unlawful debts and patterns of racketeering activity.

6. On May 9, 1975, a Grand Jury subpoena duces tecum was served upon Ranger Bakers calling for records of Silvercup Bakers, Inc. (See Attachment "A")

7. Ranger Bakers, Inc. filed a motion to quash this subpoena on June 6, 1975, (See Attachment "B") to which the Government filed a memorandum in opposition. (See Attachment "C")

8. On June 26, 1975, Chief Judge Jacob Mishler denied the aforesaid motion to quash. (See Attachment "D")

9. On July 7, 1975, a Grand Jury subpoena duces tecum was served upon Ranger Bakers, Inc., calling for production of certain records of that corporation. (See Attachment "E")

10. Ranger Bakers moved to quash this subpoena by letter dated July 11, 1975. (See Attachment "F")

11. After oral argument on August 1, 1975, the Government modified its subpoena by letter to Chief Judge Mishler on August 5, 1975. (See Attachment "G")

12. On August 6, 1975, Chief Judge Mishler denied the aforesaid motion to quash and directed Ranger Bakers, Inc. to turn over certain documents to the Grand Jury. (See Attachment "H")

13. On September 17, 1975, counsel for Ranger Bakers, Inc., James LaRossa advised the Court that Ranger Bakers, Inc. would begin producing as much of the records as it could to the Grand Jury in an orderly fashion.

14. The investigation set forth in paragraph 5 above will continue for a considerable period of time.

15. The aforesaid investigation is being conducted in good faith.

Richard L. Shanley

RICHARD L. SHANLEY
ASSISTANT ATTORNEY IN CHARGE
U.S. DEPARTMENT OF JUSTICE

Sworn to before me this
23rd day of October, 1975

Sylvia E. Morris

SYLVIA E. MORRIS
Notary Public, State of New York
No. 24-4508251
Qualified in Kings County
Commission Expires March 30, 1977

"B" - MOTION TO QUASH SUBPOENAS DUCES TECUM ATTACHED TO FOREGOING AFFIDAVIT (Filed October 24, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARK JACOBSON and RANGER BAKERS, INC., Plaintiffs	
v.	CIVIL ACTION NO. 75 C 1718
THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, et al., Defendants	MOTION TO QUASH SUBPOENAS DUCES TECUM

Defendants, Dominick Pallila, Raymond Keenan, Charles Brennan and Martin Senzer, by their attorneys, move this Court for an order quashing the alleged subpoenas duces tecum issued to them purporting to require them to produce records, memoranda and documents from the files of the Internal Revenue Service at the hearing in this matter scheduled for 3:00 P.M. on October 24, 1975, on the following grounds:

1. The alleged subpoenas do not comply with Rule 45, Federal Rules of Civil Procedure or with 28 U.S.C. 1691, in that they were not issued by this Court, they are not under the seal of the Court and are not signed by the Clerk of the Court.

2. The alleged subpoenas are overly broad and oppressive.

3. The alleged subpoenas purport to require the production of documents which have no relevance to the issues before the Court.

4. The alleged subpoenas purport to require the production of privileged documents.

5. No discovery should be allowed in this case until the Court determines that it has jurisdiction to entertain this action.

RICHARD A. SCULLY
Trial Attorney, Tax Division
U.S. Department of Justice
c/o DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for Defendants
225 Cadman Plaza East
Brooklyn, New York 11201

MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENAS DUCES TECUM

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARK JACOBSON and RANGER BAKERS, INC., Plaintiffs	
v.	CIVIL ACTION NO. 75 C 1718
THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, et al., Defendants	MEMORANDUM IN SUPPORT OF MOTION TO QUASH SUBPOENAS DUCES TECUM AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

STATEMENT

This purports to be an action for injunctive relief and for damages against the District Director of Internal Revenue, three Internal Revenue Service employees and others.

It is alleged that the Internal Revenue Service officials have conspired with unnamed representatives of the Department of Justice's Organized Crime "Strikeforce" to "harass" the plaintiffs. It is alleged that they have been singled out for "unusual and special treatment with respect to certain tax liabilities." This "unusual" treatment is alleged to involve the Service's levying on third parties to collect delinquent taxes and penalties owed by the plaintiff corporation, making jeopardy assessments in order to collect unpaid taxes of the plaintiff-taxpayer, and refusing to accept the taxpayer's proposal to pay delinquent taxes on a deferred basis. It is alleged that these actions were not meant to assure that taxes would be collected but to "destroy" the plaintiffs.

The plaintiffs seek to enjoin all defendants from subpoenaing the records of corporations or companies in which the plaintiff Jacobson has an interest, without prior Court approval, from conspiring to harass and deprive the plaintiffs of their rights and from denying the plaintiffs even-handed treatment of the tax laws and refusing to accept the plaintiffs' proposals for deferred payment of current tax liabilities.

In anticipation of the hearing on their motion for preliminary injunction scheduled for October 24, 1975, the plaintiffs have caused what are alleged to be "subpoenas duces tecum" to be served on the four Internal Revenue Service defendants. The alleged "subpoenas" purport to require the production of various Internal Revenue Service records, memoranda and documents. The "subpoenas" are apparently forms used in the New York state court system, they do not purport to issue from this Court, they are not under the seal of the Court and they are not signed by the Clerk of the Court.

LEGAL DISCUSSION

1. The "subpoenas duces tecum" are invalid and should be quashed.

The purported "subpoenas duces tecum" were not issued by the Court and they do not comply with the provisions of Rule 45(a), Federal Rules of Civil Procedure, which states:

> (a) For Attendance of Witnesses; Form; Issuance. Every subpoena shall be issued by the clerk under the seal of the court, shall state the name of the court and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. The clerk shall issue a subpoena, or a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, to a party requesting it, who shall fill it in before service.

In like manner, Section 1691 of Title 28, United States Code, requires that "all writs and process issuing from a court of the United States shall be under the seal of the court and signed by the clerk thereof." Accordingly, these "subpoenas" are defective on their face, they are invalid and should be quashed.

Aside from these technical defects in the subpoenas they are objectional for several other reasons. They are overly broad, burdensome and oppresive and seek Internal Revenue Service documents relating to third parties who have no connection or relationship to the plaintiffs and which have no relevance to the limited issues before the Court at the preliminary injunction hearing. The blanket request for all documents relating to communications with the United States Attorney or the Justice Department would encompass communications relating to the defense of this very lawsuit and violate the defendants' attorney-client privileges. Finally, until such time as the plaintiffs establish that the Court has jurisdiction to grant the injunctive relief sought, no discovery should be permitted. The mere filing of a complaint however frivolous, does not authorize the use of the discovery provisions of the Federal Rules in order to browse through the defendants' files. United States v. Atlantic Basin Iron Works, 53 F. Supp. 268 (E.D. N.Y., 1944); C. F. Simonin's Sons, Inc. v. American Can Co., 30 F. Supp. 901 (E.D. Pa., 1939).

2. The injunctive relief sought by the compiaint is prohibited.

The ultimate effect of the injunctive relief sought by the plaintiffs is to prevent the collection of federal taxes.

Section 7421 of the Internal Revenue Code of 1954 (26 U.S.C.) provides, in pertinent part, "that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, * * *." The limited exception to this prohibition is set forth in Enochs v. Williams Packing Co., 370 U.S. 1 (1962). There, the Supreme Court held that if a plaintiff could establish (1) that under no circumstances could the Government ultimately prevail in its claim for the tax and (2) that equity jurisdiction was otherwise present, then this statutory bar might become inapplicable. Inasmuch as there is no dispute as to the plaintiff corporation's liability for the withholding taxes referred to in the complaint, there is no possibility of its meeting the first part of the Enochs test. "Unless both conditions are met, a suit for preventive injunctive relief must be dismissed." Commissioner v. "Americans United", Inc., 416 U.S. 752, 758 (1974). The fact that the plaintiff here might seek only to enjoin a particular method of tax collection makes no difference, the statutory bar of Section 7421 applies. United States v. American Friends Service Com., 419 U.S. 7, 10 (1974).

Even apart from the statutory bar to the injunctive relief sought, there is no basis for it. The plaintiffs are asking the Court to substitute its judgment and discretion for that of the District Director in deciding what action should be taken to protect federal revenues. It is well settled that the Courts will not do so. See Transport Mfg. & Equip. Co. of Del. v. Trainor, 382 F. 2d 793 (C.A. 8, 1967); Lloyd v. Patterson, 242 F. 2d 742 (C.A. 5, 1957); Parenti v. Whinston, 347 F. Supp. 471 (E.D. Pa., 1972); Publishers New Press, Inc. v. Moysey, 141 F. Supp. 340 (S.D. N.Y., 1956).

It is apparent that the plaintiffs, by selectively alleging facts, seek to create the impression that the delinquency in paying withholding taxes for the second quarter of 1975 was an isolated instance. The fact of the matter, which the defendants will establish, is that the corporation has been delinquent in making required deposits of withholding taxes since its inception. At the same time, the assets and accounts receivable of the corporation have been encumbered by security interests of several creditors. Further, although the taxpayer represented an inability to pay its second quarter liabilities in requesting a deferred payment agreement, those liabilities and those for the third quarter have been paid in full. Far from having harassed or abused the plaintiffs, the defendants have simply taken reasonable and prudent measures to assure that the taxes, largely not of the plaintiffs, but those withheld from the wages of their employees, are paid.

One other aspect of the plaintiffs' request for injunctive relief requires comment. The broad request that the Court enjoin the issuance of subpoenas to companies, in which the plaintiff Jacobson has an interest, could have the effect of interfering with the Internal Revenue Service's ability to investigate the tax liabilities of those entities. Sections 7601 and 7602 of the Internal Revenue Code give the Service the power and duty "to canvass and inquire after" any person "who may be liable to pay any internal revenue tax" and the authority to issue summonses to obtain testimony and documents relating to those tax liabilities. Those statutes confer upon the Service broad mandate to investigate and audit taxpayers.

United States v. Bisceglia, 420 U.S. 141, 145 (1975). These powers are similar to those vested in grand juries and are to be liberally construed. United States v. Powell, 379 U.S. 48, 57 (1964); United States v. Giordano, 419 F. 2d 564, 569-570 (C.A. 8, 1969), cert. denied, 397 U.S. 1037 (1970); Falsone v. United States, 205 F. 2d 734, 742 (C.A. 5, 1953). The relief the plaintiff seeks could only serve to constrict and undermine this statutory mandate. Further, any restrictions of the Service's ability to investigate tax liabilities would likewise, restrain its ability to assess and collect those liabilities, thus running afoul of Section 7421.

CONCLUSION

The plaintiffs' request for injunctive relief should be denied.

Respectfully submitted,

RICHARD A. SCULLY
Trial Attorney, Tax Division
U.S. Department of Justice
c/o DAVID G. TRAGER
United States Attorney
Eastern District of New York
Attorney for Defendants
225 Cadman Plaza East
Brooklyn, New York 11201

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I certify that copies of the foregoing Motion to Quash Subpoenas Duces Tecum and a supporting Memorandum of Law will be personally handed to counsel for plaintiffs on this 24th day of October, 1975.

RICHARD A. SCULLY
Trial Attorney, Tax Division
U. S. Department of Justice
Washington, D. C. 20530

MEMORANDUM AND ORDER (Filed November 12, 1975)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MARK JACOBSON and RANGER BAKERS, INC.,	:	
Plaintiffs,	:	75 C 1712
-against-	:	
THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEP'T OF JUSTICE, THE INTERNAL REVENUE SERVICE OF THE UNITED STATES, MARTIN SENZER, Revenue Officer, DOMINICK PALLILA, Group Manager, RAYMOND KEENAN, Chief, Collection Division, and CHARLES BRENNAN, District Director,	:	MEMORANDUM AND ORDER
Defendants.	:	

APPEARANCES:

I. ING MANDELL, ESQ.
Attorney for Plaintiffs

DAVID G. TRAGER, ESQ.
United States Attorney,
Eastern District of New York
For Defendants
By PROSPER K. PARKERTON, ESQ.
Assistant U.S. Attorney
and
RICHARD A. SCULLY, ESQ.
Trial Attorney, Tax Division
United States Department of Justice

MEAHER, District Judge.

596-444

Plaintiff Ranger Bakers, Inc. ("Ranger") and co-plaintiff Mark Jacobson, its president, have brought this civil rights action alleging that defendants, the Organized Crime and Racketeering Section of the Department of Justice (the "Strike Force"), the Internal Revenue Service (the "IRS"), and named IRS officers, have carried on a "personal vendetta" against plaintiffs in violation of their constitutional rights.[1] Plaintiffs seek injunctive relief and compensatory and punitive damages for asserted acts of harassment and discriminatory enforcement of the laws, particularly the denial of even-handed treatment of the tax laws.

A temporary restraining order having been denied, the matter presently before the court is plaintiffs' motion for a preliminary injunction which would require the IRS to accept plaintiffs' proposal for deferred payment of their current tax liabilities and to afford plaintiffs the same considerations given other taxpayers in the collection of taxes due.

Plaintiffs' motion must be denied. The ultimate effect of such an injunction would be to prevent the

assessment and collection of federal taxes. Under the Anti-Injunction Act, 26 U.S.C. §7421, this court is without power to grant the injunctive relief requested.

FACTS

The actions of the IRS which plaintiffs seek to enjoin are two jeopardy assessments and levies for the collection of employee withholding taxes owed by Ranger for the second and third quarters of 1975. The events leading up to the assessments are intertwined with plaintiffs' claims against the Strike Force, not presently before the court.

On October 29, 1974 Ranger acquired the assets of Silvercup Bakeries, Inc., then in proceedings under Chapter XI of the Bankruptcy Act.[2] Ranger with Jacobson at its head began the struggle for Silvercup's financial recovery and managed to remain current with Silvercup's tax obligations, at least for employee withholding taxes, up to March 30, 1975, the end of the first quarter.[3] According to plaintiffs, Silvercup's business position improved in the hands of Ranger until a newspaper article appeared in May 1975, which stated, in effect, that Ranger and Silvercup were controlled by the "mob."[4] This information allegedly was disseminated by the Strike Force.[5]

As a result of the news item and Strike Force investigations, plaintiffs claim Ranger's business was severely damaged by loss of customers, suppliers and financial backing. Plaintiffs maintain Ranger's cash supply was so diminished it was unable to meet "the required weekly withholding tax deposits and [it] incurred a tax liability for the second quarter of 1975 . . . of approximately $264,000."[6]

There followed the first jeopardy assessment. On September 30, 1975 plaintiffs received a deficiency notice calling for payment of the second quarter withholding taxes in 10 days, i.e., by October 9, 1975.[7] At a meeting on September 30 with IRS agents, plaintiffs requested that an installment payment schedule be arranged. Before any plan was approved and on October 1, the IRS levied on Ranger's payroll account and on several customers, demanding payment in full of taxes plus penalties.[8] By the following day, Ranger had raised and paid the entire amount due, $280,715.62.[9]

Shortly thereafter the IRS made further jeopardy assessments and moved to collect the withholding taxes due for the third quarter ending September 30, 1975. On October 14 the IRS notified plaintiffs the taxes were due "immediately,"

again levying on Ranger's bank account and customers.[10] Plaintiffs insist the IRS' actions were taken as part of a conspiracy to destroy the name of Ranger, Silvercup and Jacobson and not to ensure the full collection of taxes due.[11]

PRELIMINARY INJUNCTION

Section 7421 of the Internal Revenue Code provides in pertinent part that "[e]xcept as provided in sections 6212(a) and (c), [and] 6213(a), . . . no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court . . . ." Thus the plaintiffs are not entitled to injunctive relief unless (1) the statutory bar of §7421 is lifted by the statutory exceptions of §§6212 and 6213 or by the judicially created exception of Enochs v. Williams Packing & Navigation Company, Inc., 370 U.S. 1 (1962), and (2) preliminary injunctive relief is otherwise warranted.

Statutory Exceptions to the Anti-Injunction Act

The taxes whose collection or assessment plaintiffs seek to enjoin are withholding taxes imposed upon the employer under §3402, Subtitle C (Employment Taxes), of the

Internal Revenue Code. However, §§6212 and 6213 apply only "in respect of any tax imposed by Subtitle A [Income Taxes] or B [Estate Taxes]." See 26 U.S.C. §§6212(a) and 6213(a) Clearly then, when withholding taxes are involved, plaintiffs cannot invoke the statutory exceptions to the Anti-Injunction Act which refer to the assessment of income and estate taxes imposed by Subtitles A and B of the Code. See Bolton v. Nixon, 239 F. Supp. 907, 910 (E.D. Mich. 1965); Lipsig v. United States, 187 F. Supp. 826, 828 (E.D.N.Y. 1960). Unless plaintiffs can take advantage of the judicial exception of Enochs, supra, the statutory bar of §7421 remains absolute.

Judicial Exception to the Anti-Injunction Act

The judicial exception of Enochs, supra, would allow suit despite §7421 if the taxpayer meets a two-prong test. The taxpayer must establish that (1) "it is clear under no circumstances could the Government ultimately prevail," Enochs, supra, at 7; and (2) "equity jurisdiction otherwise exists." Id. The Enochs test was recently reaffirmed in Bob Jones University v. Simon, 94 S.Ct. 2038 (1974). There the Supreme Court refused to create judicial

exceptions to §7421 other than that of Enochs, stating, "th- Court's unanimous opinion in [Enochs] indicates that the case was meant to be the capstone to judicial construction of the Act [§7421]." Id. at 2046. See United States v. American Friends Service Committee, 95 S.Ct. 13, 14-15 (1974). Plaintiffs must therefore place themselves within the confines of Enochs.

Plaintiffs assert the existence of equity jurisdiction, in that irreparable injury will ensue in the form of Ranger's inability to operate its business or pay its employees. This assertion, even if assumed to be true, is insufficient to lift the bar of §7421. See Enochs, supra, at 6. Plaintiffs must also establish the government's inability to prevail on any valid theory of tax collection. Westgate-California Corporation v. United States, 496 F.2d 839, 843 (9 Cir. 1974); Botta v. Scanlon, 314 F.2d 392, 394 n. 1 (2 Cir. 1963). This determination is to be made on the basis of the information available to the government at the time of suit. Bob Jones University v. Simon, supra, at 2046.

In making jeopardy assessments to collect unpaid withholding taxes and in levying on third parties to collect

delinquent taxes, the IRS acted under the authority of §6862 of the Internal Revenue Code. See 8A Mertens, Law of Federal Income Taxation §47A.22 and n. 22. That section mandates that:

> "(a) Immediate Assessment.—If the Secretary or his delegate believes that the collection of any tax (other than income tax, estate tax, and gift tax) under any provision of the internal revenue laws will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by law for making return and paying such tax has expired, immediately assess such tax (together with all interest, additional amounts, and additions to the tax provided for by law). Such tax, additions to the tax, and interest thereupon become immediately due and payable, and immediate notice and demand shall be made by the Secretary or his delegate for the payment thereof."

The decision to make a §6862 jeopardy assessment is, like a jeopardy assessment under §6861 in the case of income, estate and gift taxes, subject to very narrow review. Under either section the district director need only believe the collection of taxes will be jeopardized by delay. This court will not substitute its judgment for that of the district director. Cf. Westgate-California Corporation v. United States, supra, at 842-43 n. 3. However, it may inquire whether the IRS has proceeded by proper steps under §6862.

See White v. Cardoza, 368 F. Supp. 1397 (E.D. Mich. 1973); cf. United States v. Bonaguro, 294 F. Supp. 750, 753 (E.D.N.Y. 1968).

Plaintiffs raised at oral argument their claims that no valid assessment was made and there was no deficiency. As this court interprets their arguments, plaintiffs contend that the assessment was invalid because they were given neither proper notice of deficiency before assessment nor proper notice of demand before collection by levy. They also urge that as to the third quarter withholding taxes there was no deficiency because the notice received should have read "payment due in 10 days" and not "immediately," and therefore no deficiency could occur before the 10-day period expired, and because no return was due until October 31, one month after the end of the quarter period.

These arguments are without merit. Although the ordinary collection procedures require a notice of deficiency (26 U.S.C. §6212(a)) to precede an assessment of unpaid tax (26 U.S.C. §6201) and a second notice and demand for payment (26 U.S.C. §6303) to precede any additional steps to enforce collection and payment (26 U.S.C. §6331), the notice

provisions of §§6212 and 6213 do not apply to the assessment of withholding taxes. See Lipsig v. United States, supra, at 828; McAllister v. Dudley, 148 F. Supp. 548, 551 (W.D. Pa. 1956); 9 Mertens, Law of Federal Income Taxation §§49.131 and n. 63.2; 49.211 n. 41.2. Moreover, the jeopardy assessment route is an extraordinary procedure, operating outside the ordinary framework. Section 6862 permits a jeopardy assessment whether or not the time for filing a return or even payment of the tax has expired. Upon assessment the tax becomes immediately due and payable, and the district director must issue notice and demand for payment in full. See 26 U.S.C. §6862(a); Treas. Regs. §301.6862-1.

When a jeopardy assessment is made, the IRS also is empowered with special methods to effectuate collection. Under §6331 the district director must send notice and demand for payment to the taxpayer and the taxpayer normally is required to pay the amount of the assessment within 10 days. 26 U.S.C. §6331(a). However, if the district director "makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made . . . and, upon failure or refusal to pay such tax, collection thereof shall be lawful without regard to

the 10-day period provided in this section." 26 U.S.C. §6331(a) (emphasis added); see Treas. Regs. §§301.6861-1(f)(2 301.6862-1(b).

Here, jeopardy assessments plus the demand for immediate payment provided the authorized procedural route under which the IRS acted to collect withholding taxes admittedly owed by Manger. That IRS levied pursuant to the first jeopardy assessment before the 10-day period, and made the second jeopardy assessment payment due "immediately" and not in 10 days, does not render the assessment invalid. Similarly, the notice demanding payment of the third quarter withholding taxes "immediately" and deleting the 10-day period provided on the form, does not indicate there was no deficiency until the expiration of the 10-day period. Undeniably, at the time the notice was sent (October 14), the third quarter taxes were already due and had been since September 30.[12] Plaintiffs have admitted that the taxes in question, withholding taxes of second and third quarters of 1975, were due; they had been delinquent with respect to withholding taxes for the second quarter; and they had represented to the IRS, in requesting deferred payments, that difficulties in payment existed. Plaintiffs have not shown

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that under no circumstances could the government prevail in its claim for their withholding taxes. Consequently this taxpayer suit is barred by the Anti-Injunction Act.

Moreover, whether this court may entertain an action to enjoin the collection or assessment of taxes in the face of the Anti-Injunction Act is a question of this court's subject matter jurisdiction. See Bob Jones University v. Simon, supra, at 2052; Westgate-California Corporation v. United States, supra, at 841. Having found that the Anti-Injunction Statute, 26 U.S.C. §7421, applies in this case, this court is without power to grant the requested injunctive relief. Consequently plaintiffs' claim to enjoin the IRS from assessment or collection of these taxes must be dismissed for want of jurisdiction.

Accordingly, plaintiffs' motion for a preliminary injunction is denied, and the complaint, inasmuch as it seeks to enjoin the IRS from the assessment and collection of taxes, is dismissed.

SO ORDERED.

BEST COPY AVAILABLE

There being no just reason for delay, the Clerk of Court is directed to enter judgment in favor of defendants Internal Revenue Service, Martin Senzer, Dominick Pallila, Raymond Keenan, and Charles Brennan, dismissing the complaint as to those defendants.

/s/ EDWARD R. NEAHER
U. S. D. J.

Dated: Brooklyn, New York
November 12, 1975

FOOTNOTES

[1] The action is brought under 42 U.S.C. §§1981, 1985; jurisdiction is premised upon 28 U.S.C. §§1331, 1343.

[2] Affidavit of Mark Jacobson of October 15, 1975, ¶5 (hereinafter Jacobson Affidavit).

[3] Id., ¶9.

[4] Id., ¶10.

[5] Id., ¶14.

[6] Id., ¶27.

[7] Id., ¶28.

[8] Id., ¶¶28-33.

[9] Id., ¶37.

[10] Plaintiffs' memorandum in support of its motion, p. 3. A photocopy of the notice indicates the words "within 10 days" were crossed out and "immediately" substituted for time of payment.

[11] Jacobson Affidavit, ¶39.

[12] Plaintiffs have confused the IRS regulations governing when withholding taxes are to be deposited by the employer and

when a withholding tax return must be filed. The appropriate regulation for depositing withholding taxes is the following:

> "If at the close of any monthly period the aggregate amount of undeposited taxes is $2,000 or more, the employer shall deposit the undeposited taxes in a Federal Reserve bank or authorized commercial bank within 3 banking days after the close of such quarter-monthly period." Treas. Regs. §31.6302(c)-1(a)(1)(i)(b).

In contrast, a return must be filed with respect to income tax withheld by the employer:

> "on or before the last day of the first calendar month following the period for which it is made." Treas. Regs. §31.6071(a)-1(a)(1).

It is therefore clear that Ranger's deposit for withholding taxes should have been made by October 3, although the return need not have been filed until October 31.

JUDGMENT (Filed November 14, 1975)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ NOV 14 1975 ★
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - X

MARK JACOBSON and RANGER BAKERS, INC.,

Plaintiffs,

-against-

THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEP'T OF JUSTICE, THE INTERNAL REVENUE SERVICE OF THE UNITED STATES, MARTIN SENZER, Revenue Officer, DOMINICK PALLILA, Group Manager, RAYMOND KEENAN, Chief, Collection Division, and CHARLES BRENNAN, District Director,

Defendants.

- - - - - - - - - - - X

JUDGMENT

75-C-1718

M'FILMED

M'FILMED

A memorandum and order of the Honorable Edward R. Neaher, United States District Judge, having been filed on November 12, 1975, denying the plaintiffs' motion for a preliminary injunction for want of jurisdiction and accordingly dismissing the complaint, inasmuch as it seeks to enjoin the Internal Revenue Service from the assessment and collection of taxes, and there being no just reason for delay, directing the Clerk to enter judgment in favor of the defendants Internal Revenue Service, Martin Senzer, Dominick Pallila, Raymond Keenan and Charles Brennan, dismissing the complaint to those defendants, it is

ORDERED and ADJUDGED that the plaintiff take nothing of the defendants Internal Revenue Service, Martin Senzer, Dominick Pallila, Raymond Kennan and Charles Brennan, and that the complaint is dismissed as to those defendants.

Dated: Brooklyn, N.Y.
November 13, 1975

Lewis Orgel
Clerk

BEST COPY AVAILABLE

NOTICE OF APPEAL (Filed January 14, 1976)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

MARK JACOBSON and RANGER BAKERS, INC.,

Plaintiffs,

-against-

THE ORGANIZED CRIME AND RACKETEERING SECTION OF THE UNITED STATES DEPARTMENT OF JUSTICE, THE INTERNAL REVENUE SERVICE OF THE UNITED STATES, MARTIN SENZER, Revenue Officer, DOMINICK PALLILA, Group Manager, RAYMOND KEENAN, Chief, Collection Division, and CHARLES BRENNAN, District Director,

Defendants.

- -x

75 C 1718

NOTICE OF APPEAL

Notice is hereby given that MARK JACOBSON and RANGER BAKERS, INC., plaintiffs above named hereby appeal to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 14th day of November, 1975 dismissing the complaint as to the defendants Internal Revenue Service, Martin Senzer, Dominick Pallila, Raymond Keenan and Charles Brennan.

Dated: New York, New York
December 9, 1975



IRVING MANDELL
Attorney for Plaintiffs
110-11 Queens Blvd.
Forest Hills, N. Y. 11375

A 202 Affidavit of Personal Service of Papers

LUTZ APPELLATE PRINTERS, INC.

COURT OF APPEALS
FOR THE SECOND CIRCUIT

MARK JACOBSON AND RANGER BAKERS INC.,
Plaintiffs- Appellants,

- against -

THE ORGANIZED CRIME AND RACKETEERING, etal.,
Defendants- Appellees.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF **NEW YORK** *ss.:*

I, Victor Ortega, *being duly sworn,*
depose and say that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York

That on the **17th** *day of* **May** *19* **76** *at* **225 Cadman Plaza, Brooklyn, New York** *upon*

deponent served the annexed ~~Brief~~ & appendix
David Trager USU Attorney Eastern Dist.

the **Attorney** *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* *herein,*

Sworn to before me, this **17th**
day of **May** *19* **76**

Victor Ortega

VICTOR ORTEGA

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31 0418950
Qualified in New York County
Commission Expires March 30, 1977